

IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF TEXAS
EL PASO DIVISION

TRISURA SPECIALTY
INSURANCE COMPANY,
Plaintiff,

v.

JORDAN MARTINEZ d/b/a
JIT TRANSPORTATION,
Defendant.

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CIVIL ACTION NO. 3:20-cv-00034

**PLAINTIFF’S DECLARATORY JUDGMENT ACTION
AND MEMORANDUM IN SUPPORT**

Trisura Specialty Insurance Company (“**Trisura**”) files this Declaratory Judgment action seeking a declaration from the Court that Trisura owes no duty of defense or indemnity to its insured, Jordan Martinez d/b/a JIT Transportation (“**JIT Transportation**”). Trisura insures JIT Transportation under a Commercial Automobile Liability Policy (the “**Auto Policy**”).¹ Following a fatal wreck between two JIT Transportation employees, the surviving widow and minor children of Hector-Reyes Acosta (“**Acosta**”) filed a lawsuit against JIT Transportation (the “**Reyes Lawsuit**”).²

JIT Transportation referred the claims against it to Trisura for coverage. Trisura has no duty to defend or indemnify JIT Transportation (1) under governing statutes, (2) under the Auto Policy, and (3) under the Auto Policy’s endorsements. The terms of the applicable statutes and policies—including in particular an endorsement excluding coverage for employees acting within

¹ Trisura issued Commercial Automobile Liability Policy Number TTT-44-2-180176 to named insured Jordan Martinez d/b/a JIT Transportation, 4945 Ruben Soto Drive, El Paso, Texas 79938, which has a policy period of September 4, 2018 to September 4, 2019, and a potentially applicable combined single limit of insurance for commercial automobile liability of \$1 million and personal injury protection of \$2,500. *See* Exhibit A.

² *Vanessa Reyes, et al v. Jordan Martinez d/b/a JIT Transportation*, Cause No 2019-DC-V2558, in the 168th District Court of El Paso County, Texas (the “**Reyes Lawsuit**”). *See* Exhibit B.

the scope of their employment (the “**MCS-90 Endorsement**”)—exclude coverage because Acosta was an employee of JIT Transportation and was acting as such at the time of his death. The Court should therefore issue a judgment declaring that Trisura owes no duty of defense or indemnity to JIT Transportation.

PARTIES

1. Plaintiff Trisura Specialty Insurance Company, is a corporation that is organized under the laws of the State of Oklahoma.

2. Defendant Jordan Martinez d/b/a JIT Transportation, an individual and a citizen of the State of Texas, may be served with process at 4945 Ruben Soto Drive, El Paso, Texas 79938.

JURISDICTION

3. The Court has jurisdiction over the lawsuit because the suit arises under 28 U.S.C. § 1332. Trisura is a citizen of Oklahoma, while JIT Transportation is a citizen of Texas. The amount in controversy (*i.e.*, the policy limit of \$1,000,000) is above \$75,000 as the Plaintiff in the Reyes Lawsuit seeks monetary relief of over \$1,000,000. *See* Exhibit B, the Reyes Lawsuit at 2.

4. Plaintiff brings this suit for a declaratory judgment under both Federal Rule of Civil Procedure 57 and 28 U.S.C. §§ 2201 and 2202.

VENUE

5. Venue is proper in this district under 28 U.S.C. § 1391(b)(1) because defendant, JIT Transportation, resides in this district.

I. INTRODUCTION

6. Trisura seeks a declaratory judgment from this Court that it owes no duty to defend or indemnify JIT Transportation with respect to the damages sought in the Reyes Lawsuit because the circumstances of the accident described in the Reyes Lawsuit (1) fall under statutory exclusions

to motor vehicle insurance coverage, (2) fall under an exclusion in the Auto Policy, and (3) are excluded under the MCS-90 Endorsement. The Court need only decide in Trisura's favor on one of these questions to issue the requested declaratory judgment.

7. At the time of Acosta's accident he was driving a truck in the course of his employment with JIT Transportation. *See* Exhibit C, Notice of Loss. Under the terms and conditions of the Trisura Auto Policy, bodily injury to employees engaged in the scope of their employment is specifically excluded from the Auto Policy. Consequently, the JIT Transportation's coverage request is explicitly excluded from the Auto Policy. Trisura has no obligation to defend or indemnify JIT Transportation.

II. FACTS

8. The Reyes Lawsuit asserts Acosta "was driving eastbound from El Paso, Texas towards Laredo, Texas on U.S. 90" when JIT Transportation's employee Cayetano Chavarria ("Chavarria") "drifted out of his lane and into oncoming traffic and collided head-on with [Acosta]." *See* Exhibit B, the Reyes Lawsuit at 1-2. The collision resulted in both trucks and tractors catching fire, and the deaths of both Chavarria and Acosta. *Id.* at 2-3. Acosta was, at the time of the accident, driving on behalf of JIT Transportation, in a truck owned by JIT Transportation. *See* Exhibit C, Notice of Loss (identifying Acosta, as a decedent employee in the Accident).

III. ARGUMENT

9. Trisura owes no duty of indemnity or defense to JIT Transportation based on specific exclusions. There are explicit bodily injury exclusions in both the Motor Vehicle Safety Responsibility Act ("MVSRA"), TEX. TRANS. CODE, Ch. 601, *et seq.*, and the Motor Carrier Safety Act ("MCSA"), 49 CFR Part 390, *et seq.*, (collectively the "Statutes") and the Auto Policy. Trisura seeks declaration from this Court that it owes no duty to defend or indemnify JIT

Transportation for the damages sought in the Reyes Lawsuit.

10. Here, the MVSRA and the MCSA should be given their plain meaning. *See United States v. Clarke*, 445 U.S. 253, 254 (1980) (“plain meaning” canon of statutory interpretation is “old-fashioned but nonetheless still entirely appropriate”). The interpretation of the terms of the Auto Policy is a question of law, and the Court applies the rules of construction for contracts. *See Mid-Continent Cas. Co. v. Castagna*, 410 S.W.3d 445, 456 (Tex. App.—Dallas 2013, pet. denied). The unambiguous language of the policy determines the intent of the parties. *See Gilbert Tex. Constr., L.P. v. Underwriters at Lloyd's London*, 327 S.W.3d 118, 126 (Tex. 2010).

A. Under Statute, Trisura Cannot Insure against Liability for Damages Sought in the Reyes Lawsuit.

11. Section 601.075 of the MVSRA governs motor vehicle liability insurance. Under that section, the Auto Policy is prohibited by statute from covering Acosta’s death in the accident. Section 601.075 describes which liability terms are required,³ which are optional,⁴ and which are prohibited.⁵ This statutory provision (the “**Prohibited Terms**”), excerpted in part below, states:

A motor vehicle liability insurance policy may not insure against liability:

* * *

(2) for bodily injury to or death of an employee of the insured while engaged in the employment, other than domestic, of the insured, or in domestic employment if benefits for the injury are payable or required to be provided under a workers’ compensation law[.]

12. This provision was implemented to encourage employers to provide protections for

³ MVSRA, § 601.076-077.

⁴ *Id.*, § 601.074.

⁵ *Id.*, § 601.075.

employees.⁶ If an employee is not a domestic employee, the Prohibited Terms apply, preventing coverage for the employee's death.⁷ If the employee *is* a domestic employee, then the Prohibited Terms apply unless the domestic employee is covered under a Workman's Compensation law or plan.

13. Under the applicable clause of the Prohibited Terms—the first clause, the Auto Policy's Coverage Provisions do not apply because the claim meets the following two elements: (1) it is for the death of Acosta, the employee of the insured, and (2) the employee was engaged in his employment at the time of the death.

14. Acosta was driving a truck owned by JIT Transportation, on behalf of JIT Transportation, at the time of the accident, an employee of JIT Transportation. *See* Exhibit C, First Notice of Loss. Consequently, Acosta was acting within the scope of his employment at the time of his accident as he drove the vehicle on behalf of JIT Transportation. Thus, Acosta's death falls squarely within the Prohibited Terms statute, and Trisura cannot, by law, insure against JIT Transportation's liability.

15. The Court need only evaluate the first clause of the Prohibited Terms, as Acosta is not a "domestic employee" of JIT Transportation. *See Robertson v. Home State County Mut. Ins. Co.*, 348 S.W.3d 273, 278 (Tex. App.—Fort Worth June 2, 2011) (determining that a "domestic employee" is a "person engaged in employment incidental to a personal residence."); *see also, Amerisure Ins. Co. v. Navigators Ins. Co.*, 611 F.3d 299, 310-11 (5th Cir. 2010).

⁶ The exclusion of these circumstances is likely due to the legislature's attempt to persuade employers to maintain workmen's compensation protection for normal employees, and to protect domestic workers who are not entitled to workmen's compensation protection. *See, e.g. Robertson v. Home State County Mut. Ins. Co.*, 348 S.W.3d 273, 278 (Tex. App.—Fort Worth June 2, 2011) (opining, in dicta that when Tex. Lab. Code § 406.091(a)(1) (excluding domestic workers) and the Transportation Code are read together, this term was designed not to protect normal employees, but to fill the gap in coverage for domestic employees who were not otherwise entitled to protection under the Labor Code).

⁷ MVSRA, § 601.075.

16. In addition, the MCSA provides meaning of terms under insurance policies designed to comply with federal requirements for motor carriers. *See Consumers County Mut. Ins. Co. v. P.W. & Sons Trucking Inc.*, 307 F.3d 362, 366 (5th Cir. 2002). The language of the MCSA specifically defines “employee” as:

[A]n operator of a commercial motor vehicle (*including an independent contractor when operating a commercial motor vehicle*), a mechanic, a freight handler, *or* an individual not an employer, who—

(A) directly affects commercial motor vehicle safety in the course of employment; and

(B) is not an employee of the United States Government, a State, or a political subdivision of a State...

49 U.S.C. § 31132(2) (emphasis added). Pursuant to the above, Acosta is deemed a statutory employee.

17. Application of the MVSRA and the MCSA is dispositive in this case, and the Court should grant Trisura’s declaratory judgment on this ground, alone. The Auto Policy, however, also excludes coverage here under its terms.

B. The Auto Policy Explicitly Excludes Acosta’s Death Occurring within the Scope of His Employment.

18. In addition to the prohibition on insuring against this sort of loss from the Statutes, the Auto Policy itself excludes coverage for defense or indemnification for a fatal accident involving an employee acting within the scope of his employment.

19. The duty to defend in Texas is generally determined solely by the allegations in the pleading under the eight corners rule *Northfield Ins. Co. v. Loving Home Care, Inc.*, 363 F.3d 523, 528 (5th Cir. 2004); *see also GuideOne Elite Ins. Co. v. Fielder Rd. Baptist Church*, 197 S.W.3d 305, 308-09 (Tex. 2006). But external evidence is permitted if it “does not implicate . . . negligence in the underlying suit, does not contradict any of the allegations in the pleadings, and controls the

question of policy coverage.” *See Oida Risk Retention Group, Inc. v. Williams*, 579 F.3d 469 (5th Cir. 2009) (citation omitted) (determining whether a truck driver was an employee, the Fifth Circuit permits extrinsic evidence because the underlying pleadings “do not contain the facts necessary to resolve the question.”).

20. In addition, under Texas law, when “the same reasons that negate the duty to defend likewise negate any possibility the insurer will ever have a duty to indemnify,” both are justiciable at the outset of the case. *See, e.g., Farmers Texas County Mutual Ins. Co. v. Griffin*, 955 S.W.2d 81, 84 (Tex. 1997). In this case, the bodily injury to employee exclusion applies to preclude both any duty to defend and to indemnify. Consistent with the statutes discussed above, the bodily injury coverage of the policy is subject to various exclusions, despite its broad terms. *See* Exhibit A, Auto Policy at Coverage A,⁸ Coverage C,⁹ and Coverage D.¹⁰ The relevant exclusion (the “**Exclusion**”) states, in part:

This Policy Does Not Apply:

⁸ Coverage A. Bodily Injury Liability:

To indemnify the insured for all sums that he shall become legally obligated to pay as damages because of bodily injury including death at any time resulting therefrom, sustained by any person, caused by accident and arising out of the ownership, maintenance or use of the automobile.

The words “bodily injury”, and the word “injury” when referring to bodily injury, shall be deemed to include “sickness or disease.”

⁹ Coverage C. Combined Bodily Injury and Property Damage:

To indemnify the insured for all sums that he shall become legally obligated to pay as damages because of bodily injury, including death at any time resulting therefrom, sustained by any person or injury to or destruction of property, including the loss of use thereof caused by accident and arising out of the ownership, maintenance and use of the automobile.

¹⁰ Coverage D. Personal Injury Protection:

To pay all reasonable expenses incurred within one year from the date of accident for necessary medical, surgical, ambulance, hospital, professional nursing and funeral services, to or for each person who sustains bodily injury, sickness or disease, caused by accident, while in or upon, entering or alighting from the automobile if the automobile is being used by the named insured or with his permission.

21. I. Under Coverages A, C and D:

* * *

to bodily injury or to death of any employee of the insured while engaged in the employment, other than domestic, of the insured or in domestic employment if benefits therefore are either payable or required to be provided under any Workmen's Compensation law, plan or scheme.

Id. (emphasis added).

22. The Exclusion describes the same two circumstances as the Prohibited Terms from the statutes discussed above, in which the Exclusion applies, putting the claims outside the Coverage Provisions: (1) if the employee *is not a domestic employee*, then the bodily injury or death of the employee acting within the scope of his employment is excluded, and (2) if the employee *is* a domestic employee then the Exclusion only applies if the domestic employee is covered under a Workman's Compensation law or plan.

23. As discussed above in the discussion regarding MVSRA, under the applicable clause of the Exclusion—the first clause, the Auto Policy's Coverage Provisions do not apply if the claim meets the following two elements: (1) it is for the death of the employee of the insured, and (2) the employee was engaged in his employment at the time of the death. The application of these terms is indisputable. As set forth above, Acosta was, at the time of the accident, a statutory employee of JIT Transportation. In the alternative, evidence exists to establish that Acosta was an employee of JIT Transportation. *See* Exhibit C, First Notice of Loss. His role as a driver, operating a truck at JIT Transportation's request, is square within the scope of his employment. Acosta's death falls squarely within this exclusion, and Trisura has no duty to defend or indemnify JIT Transportation.

24. As with the statute, the Court need only evaluate the first clause of the Exclusion, as Acosta was a truck driver and not a "domestic employee" of JIT Transportation. *See Robertson*

v. Home State County Mut. Ins. Co., 348 S.W.3d 273, 278 (Tex. App—Fort Worth 2011) (determining that a “domestic employee” is a “person engaged in employment incidental to a personal residence.”); *see also, Amerisure Ins. Co. v. Navigators Ins. Co.*, 611 F.3d 299, 310-11 (5th Cir. 2010). Acosta, not a domestic employee is explicitly excluded from this clause, falling only within the first clause of the Exclusion.

C. Trisura Has No Duty to Defend against Acosta’s Claims under the MCS-90 Endorsement.

25. Finally, Trisura has no duty to indemnify JIT Transportation pursuant to the MCS-90 endorsement because: (1) there is no final judgment; and (2) there is an exclusion of death to an employee acting within the scope of employment. The relevant portion of the MCS-90 endorsement is excerpted, in part, below:

FORM MCS-90

In consideration of the premium stated in the policy to which this endorsement is attached, the insurer (the company) *agrees to pay, within the limits of liability described herein, any final judgment* recovered against the insured for public liability resulting from negligence in the operation, maintenance or use of motor vehicles... **Such insurance as is afforded, for public liability, does not apply to injury to or death of the insured’s employees while engaged in the course of their employment, or property transported by the insured, designated as cargo.**

See MCS-90 Endorsement (emphasis added).

26. First, any responsibility Trisura might otherwise have to indemnify JIT Transportation would only be triggered by a final judgment: Trisura “agrees to pay, within the limits of liability described herein, any final judgment recovered against the insured.” Unless and until there is a final judgment resulting from negligence in the operation of motor vehicles, Trisura is exempted from indemnifying JIT Transportation. The Reyes Lawsuit has not reached that stage of litigation.

27. Second, the MCS-90 endorsement explicitly excludes injury or death of employees

acting in the course of their employment. This exclusion mirrors those discussed *supra* II.1 and II.2. Without repeating those arguments, the Court can conclude that Trisura has no duty to defend or indemnify JIT Transportation, at all.

28. Finally, the MCS-90 endorsement does not include any duty to defend – it’s only scope is a duty to indemnify. Finally, the MCS-90 endorsement is silent on any obligation to indemnify JIT Transportation. Because there is no explicit duty to indemnify articulated in the MCS-90 endorsement, none should be inferred by the Court. *See Ethyl Corp. v. Daniel Constr. Co.*, 725 S.W.2d 705, 708 (Tex. 1987) (“parties seeking to indemnify the indemnitee from the consequences of its own negligence must express that intent in specific terms”).

29. JIT Transportation’s claims for defense and indemnification are barred under the MCS-90 endorsement. The application of the MCS-90 endorsement is a separate, complete ground to grant Trisura’s Declaratory Judgment. Trisura requests the Court enter a declaratory judgment in its favor, confirming it has no duty to indemnify or defend JIT Transportation under the MCS-90 endorsement for the same reasons it does not have the obligation under the Auto policy.

IV. CONCLUSION & PRAYER

30. Trisura seeks declaration from this Court that it owes no duty to defend JIT Transportation, nor does it owe any obligation of indemnity, because the damages sought in the Reyes Lawsuit fall under statutory exclusions to motor vehicle insurance coverage, and because they are excluded by the terms and provisions of the Auto policy. The Court need only reach the first question raised to decide this declaratory judgment.

31. For these reasons, Trisura asks for a declaratory judgment against JIT Transportation for the following:

- a. A declaration that Trisura has no duty to defend or indemnify JIT Transportation;

- b. Reasonable attorneys' fees;
- c. Costs of suit; and
- d. All other relief the Court deems appropriate.

Respectfully submitted,

GLAST, PHILLIPS & MURRAY, P.C.

BY: /s/ Joseph D. Zopolsky
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COUNSEL FOR PLAINTIFF

EXHIBIT "A"



Transborder Insurance Intermediaries
9335 Airway Road Suite 104
San Diego, CA 92154

To report an accident please call:
1-866-552-6985



Trisura Specialty Insurance Company
210 Park Avenue, Suite 1400
Oklahoma City, OK 73102

Form Schedule

Policy Number: TTT-44-2-180176

Forms and Endorsements applying to this Commercial General Liability Coverage Part and made a part of this policy at time of issue: 08/31/2018 12:01 AM

Forms Applicable To All Premises and Coverages

Form	Edition	Description
		-Forms Schedule
		- Commercial General Liability Coverage Part Declarations
CG 00 01 0413		- Commercial General Liability Coverage Form
CG 20 01 0413		-Primary and Noncontributory – Other Insurance Condition
CG 20 38 0413		-Additional Insured – Owners, Lessees or Contractors...
CG 21 49 0999		-Total Pollution Exclusion Endorsement
CG 21 54 0199		-Exclusion – Designated Operators Covered by a consolidated (Wrap Up) Insurance Program
CG 21 73 0115		-Exclusion of Certified Acts of Terrorism
CG 21 86 1204		-Exclusion – Exterior Insulation and Finish Systems
CG 25 03 0509		-Designated Construction Project(s) General Aggregate Limit
GLS-281s 0907		-Continuing or Ongoing Damage Exclusion
GLS-289s 1107		-Known Injury or Damage Exclusion – Personal and Advertising Injury
GLS-455s 0814		-Marijuana/Cannabis Products Exclusion
UTS-128s 8-15		-Optional Provisions Endorsement
USIC-0034 (15 12 13)		-Scheduled Vehicles and Listed Drivers Only Endorsement
		-Complete List of Insured Vehicles
		-Complete List of Drivers



Transborder Insurance Intermediaries
9335 Airway Road Suite 104
San Diego, CA 92154

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1-866-552-6985



Trisura Specialty Insurance Company
210 Park Avenue, Suite 1400
Oklahoma City, OK 73102

POLICY NUMBER: TTT-44-2-180176

COMMERCIAL GENERAL LIABILITY
CG DS 01 1 01

COMMERCIAL GENERAL LIABILITY DECLARATIONS

COMPANY NAME AREA		PRODUCER NAME AREA	
Trisura Specialty Insurance Company			
NAME INSURED: JORDAN MARTINEZ			
MAILING ADDRESS: 4945 RUBEN SOTO DR, EL PASO, TX 79938			
POLICY PERIOD FROM: 09/04/2018		TO: 09/04/2019	
YOUR MAILING ADDRESS SHOWN ABOVE		AT 12:01 A.M. TIME AT	

IN RETURN FOR THE PAYMENT OF THE PREMIUM, AND SUBJECT TO ALL THE TERMS OF THIS POLICY, WE AGREE WITH YOU TO PROVIDE THE INSURANCE AS STATED IN THIS POLICY.

LIMITS OF INSURANCE	
EACH OCCURRENCE LIMIT	\$ 1,000,000
DAMAGE TO PREMISES	100,000
RENTED TO YOU LIMIT	\$ Any one premises
MEDICAL EXPENSE LIMIT	\$ Not Included Any one person
PERSONAL & ADVERTISING INJURY LIMIT	\$ Not Included Any one person or organization
GENERAL AGGREGATE LIMIT	\$ 2,000,000
PRODUCTS/COMPLETED OPERATIONS AGGREGATE LIMIT	\$ Not Included

RETROACTIVE DATE (CG 00 02 ONLY)
THIS INSURANCE DOES NOT APPLY TO "BODILY INJURY", "PROPERTY DAMAGE" OR "PERSONAL AND ADVERTISING INJURY" WHICH OCCURS BEFORE THE RETROACTIVE DATE, IF ANY, SHOW BELOW
RETROACTIVE DATE: None
(ENTER DATE OR "NONE" IF NO RETROACTIVE DATE APPLIES)

DESCRIPTION OF BUSINESS
FORM OF BUSINESS:
<input type="checkbox"/> INDIVIDUAL <input type="checkbox"/> PARTNERSHIP <input type="checkbox"/> JOINT VENTURE <input type="checkbox"/> TRUST
<input checked="" type="checkbox"/> LIMITED LIABILITY COMPANY <input type="checkbox"/> ORGANIZATION, INCLUDING A CORPORATION (BUT NOT INCLUDING A PARTNERSHIP, JOINT VENTURE OR LIMITED LIABILITY COMPANY)
BUSINESS DESCRIPTION: Transportation



Transborder Insurance Intermediaries
9335 Airway Road Suite 104
San Diego, CA 92154

To report an accident please call:
1-866-552-6985



Trisura Specialty Insurance Company
210 Park Avenue, Suite 1400
Oklahoma City, OK 73102

ALL PREMISES YOU OWN, RENT OR OCCUPY

LOCATION NUMBER	ADDRESS OF ALL PREMISES YOU OWN, RENT OR OCCUPY
	4945 RUBEN SOTO DR EL PASO TX 79938

CLASSIFICATION AND PREMIUM

LOCATION NUMBER	CLASSIFICATION	CODE NO.	PREMIUM BASE	RATE		ADVANCE PREMIUM	
				Prem/Ops	Prod/Comp Ops	Prem/Ops	Prod/Comp Ops
			\$	\$	\$	\$	
			STATE TAX OR OTHER (if applicable)		\$		
			TOTAL PREMIUM (SUBJECT TO AUDIT)		\$		
PREMIUM SHOWN IS PAYABLE			AT INCEPTION		\$		
			AT EACH ANNIVERSARY		\$		
			(IF POLICY PERIOD IS MORE THAN ONE YEAR AND PREMIUM IS PAID IN ANNUAL INSTALLMENTS)				
AUDIT PERIOD (IF APPLICABLE)	<input type="checkbox"/> ANNUALLY	<input type="checkbox"/> SEMI-ANNUALLY	<input type="checkbox"/> QUARTERLY	<input type="checkbox"/> MONTHLY			

ENDORSEMENTS

ENDORSEMENTS ATTACHED TO THIS POLICY:

THESE DECLARATIONS, TOGETHER WITH THE COMMON POLICY CONDITIONS AND COVERAGE FORM(S) AND ANY ENDORSEMENT(S), COMPLETE THE ABOVE NUMBERED POLICY.

Countersigned:	By:
(Date)	(Authorized Representative)

NOTE:

OFFICERS' FACSIMILE SIGNATURES MAY BE INSERTED HERE, ON THE POLICY COVER OR ELSEWHERE AT THE COMPANY'S OPTION.



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Trisura Specialty Insurance Company

COMMERCIAL GENERAL LIABILITY
CG 00 01 04 13

COMMERCIAL GENERAL LIABILITY COVERAGE FORM

Various provisions in this policy restrict coverage. Read the entire policy carefully to determine rights, duties and what is and is not covered.

Throughout this policy the words "you" and "your" refer to the Named Insured shown in the Declarations, and any other person or organization qualifying as a Named Insured under this policy. The words "we", "us" and "our" refer to the company providing this insurance.

The word "insured" means any person or organization qualifying as such under Section II - Who Is An Insured.

Other words and phrases that appear in quotation marks have special meaning. Refer to Section V - Definitions.

SECTION I - COVERAGES

COVERAGE A - BODILY INJURY AND PROPERTY DAMAGE LIABILITY

1. Insuring Agreement

- a. We will pay those sums that the insured becomes legally obligated to pay as damages because of "bodily injury" or "property damage" to which this insurance applies. We will have the right and duty to defend the insured against any "suit" seeking those damages. However, we will have no duty to defend the insured against any "suit" seeking damages for "bodily injury" or "property damage" to which this insurance does not apply. We may, at our discretion, investigate any "occurrence" and settle any claim or "suit" that may result. But:

- (1) The amount we will pay for damages is limited as described in Section III - Limits Of Insurance; and
- (2) Our right and duty to defend ends when we have used up the applicable limit of insurance in the payment of judgments or settlements under Coverages A or B or medical expenses under Coverage C.

No other obligation or liability to pay sums or perform acts or services is covered unless explicitly provided for under Supplementary Payments - Coverages A and B.

- b. This insurance applies to "bodily injury" and "property damage" only if:
- (1) The "bodily injury" or "property damage" is caused by an "occurrence" that takes place in the "coverage territory";

- (2) The "bodily injury" or "property damage" occurs during the policy period; and

- (3) Prior to the policy period, no insured listed under Paragraph 1. of Section II - Who Is An Insured and no "employee" authorized by you to give or receive notice of an "occurrence" or claim, knew that the "bodily injury" or "property damage" had occurred, in whole or in part. If such a listed insured or authorized "employee" knew, prior to the policy period, that the "bodily injury" or "property damage" occurred, then any continuation, change or resumption of such "bodily injury" or "property damage" during or after the policy period will be deemed to have been known prior to the policy period.

- c. "Bodily injury" or "property damage" which occurs during the policy period and was not, prior to the policy period, known to have occurred by any insured listed under Paragraph 1. of Section II - Who Is An Insured or any "employee" authorized by you to give or receive notice of an "occurrence" or claim, includes any continuation, change or resumption of that "bodily injury" or "property damage" after the end of the policy period.

- d. "Bodily injury" or "property damage" will be deemed to have been known to have occurred at the earliest time when any insured listed under Paragraph 1. of Section II - Who Is An Insured or any "employee" authorized by you to give or receive notice of an "occurrence" or claim:

- (1) Reports all, or any part, of the "bodily injury" or "property damage" to us or any other insurer;
- (2) Receives a written or verbal demand or claim for damages because of the "bodily injury" or "property damage"; or
- (3) Becomes aware by any other means that "bodily injury" or "property damage" has occurred or has begun to occur.

- e. Damages because of "bodily injury" include damages claimed by any person or organization for care, loss of services or death resulting at any time from the "bodily injury".



Transborder Insurance Intermediaries

To report an accident please call:
1-866-552-6985



Trisura Specialty Insurance Company

2. Exclusions

This insurance does not apply to:

a. Expected Or Intended Injury

"Bodily injury" or "property damage" expected or intended from the standpoint of the insured. This exclusion does not apply to "bodily injury" resulting from the use of reasonable force to protect persons or property.

b. Contractual Liability

"Bodily injury" or "property damage" for which the insured is obligated to pay damages by reason of the assumption of liability in a contract or agreement. This exclusion does not apply to liability for damages:

- (1) That the insured would have in the absence of the contract or agreement; or
- (2) Assumed in a contract or agreement that is an "insured contract", provided the "bodily injury" or "property damage" occurs subsequent to the execution of the contract or agreement. Solely for the purposes of liability assumed in an "insured contract", reasonable attorneys' fees and necessary litigation expenses incurred by or for a party other than an insured are deemed to be damages because of "bodily injury" or "property damage", provided:
 - (a) Liability to such party for, or for the cost of, that party's defense has also been assumed in the same "insured contract"; and
 - (b) Such attorneys' fees and litigation expenses are for defense of that party against a civil or alternative dispute resolution proceeding in which damages to which this insurance applies are alleged.

c. Liquor Liability

"Bodily injury" or "property damage" for which any insured may be held liable by reason of:

- (1) Causing or contributing to the intoxication of any person;
- (2) The furnishing of alcoholic beverages to a person under the legal drinking age or under the influence of alcohol; or
- (3) Any statute, ordinance or regulation relating to the sale, gift, distribution or use of alcoholic beverages.

This exclusion applies even if the claims against any insured allege negligence or other wrongdoing in:

- (a) The supervision, hiring, employment, training or monitoring of others by that insured; or
- (b) Providing or failing to provide transportation with respect to any person that may be under the influence of alcohol;

if the "occurrence" which caused the "bodily injury" or "property damage", involved that which is described in Paragraph (1), (2) or (3) above.

However, this exclusion applies only if you are in the business of manufacturing, distributing, selling, serving or furnishing alcoholic beverages. For the purposes of this exclusion, permitting a person to bring alcoholic beverages on your premises, for consumption on your premises, whether or not a fee is charged or a license is required for such activity, is not by itself considered the business of selling, serving or furnishing alcoholic beverages.

d. Workers' Compensation And Similar Laws

Any obligation of the insured under a workers' compensation, disability benefits or unemployment compensation law or any similar law.

e. Employer's Liability

"Bodily injury" to:

- (1) An "employee" of the insured arising out of and in the course of:
 - (a) Employment by the insured; or
 - (b) Performing duties related to the conduct of the insured's business; or
- (2) The spouse, child, parent, brother or sister of that "employee" as a consequence of Paragraph (1) above.

This exclusion applies whether the insured may be liable as an employer or in any other capacity and to any obligation to share damages with or repay someone else who must pay damages because of the injury.

This exclusion does not apply to liability assumed by the insured under an "insured contract".



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(2) Any loss, cost or expense arising out of any:

- (a) Request, demand, order or statutory or regulatory requirement that any insured or others test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to, or assess the effects of, "pollutants"; or
- (b) Claim or suit by or on behalf of a governmental authority for damages because of testing for, monitoring, cleaning up, removing, containing, treating, detoxifying or neutralizing, or in any way responding to, or assessing the effects of, "pollutants".

However, this paragraph does not apply to liability for damages because of "property damage" that the insured would have in the absence of such request, demand, order or statutory or regulatory requirement, or such claim or "suit" by or on behalf of a governmental authority.

g. Aircraft, Auto Or Watercraft

"Bodily injury" or "property damage" arising out of the ownership, maintenance, use or entrustment to others of any aircraft, "auto" or watercraft owned or operated by or rented or loaned to any insured. Use includes operation and "loading or unloading".

This exclusion applies even if the claims against any insured allege negligence or other wrongdoing in the supervision, hiring, employment, training or monitoring of others by that insured, if the "occurrence" which caused the "bodily injury" or "property damage" involved the ownership, maintenance, use or entrustment to others of any aircraft, "auto" or watercraft that is owned or operated by or rented or loaned to any insured.

This exclusion does not apply to:

- (1) A watercraft while ashore on premises you own or rent;
- (2) A watercraft you do not own that is:
 - (a) Less than 26 feet long; and
 - (b) Not being used to carry persons or property for a charge;
- (3) Parking an "auto" on, or on the ways next to, premises you own or rent, provided the "auto" is not owned by or rented or loaned to you or the insured;
- (4) Liability assumed under any "insured contract" for the ownership, maintenance or use of aircraft or watercraft; or

(5) "Bodily injury" or "property damage" arising out of:

- (a) The operation of machinery or equipment that is attached to, or part of, a land vehicle that would qualify under the definition of "mobile equipment" if it were not subject to a compulsory or financial responsibility law or other motor vehicle insurance law where it is licensed or principally garaged; or
- (b) The operation of any of the machinery or equipment listed in Paragraph f.(2) or f.(3) of the definition of "mobile equipment".

h. Mobile Equipment

"Bodily injury" or "property damage" arising out of:

- (1) The transportation of "mobile equipment" by an "auto" owned or operated by or rented or loaned to any insured; or
- (2) The use of "mobile equipment" in, or while in practice for, or while being prepared for, any prearranged racing, speed, demolition, or stunting activity.

i. War

"Bodily injury" or "property damage", however caused, arising, directly or indirectly, out of:

- (1) War, including undeclared or civil war;
- (2) Warlike action by a military force, including action in hindering or defending against an actual or expected attack, by any government, sovereign or other authority using military personnel or other agents; or
- (3) Insurrection, rebellion, revolution, usurped power, or action taken by governmental authority in hindering or defending against any of these.

j. Damage To Property

"Property damage" to:

- (1) Property you own, rent, or occupy, including any costs or expenses incurred by you, or any other person, organization or entity, for repair, replacement, enhancement, restoration or maintenance of such property for any reason, including prevention of injury to a person or damage to another's property;
- (2) Premises you sell, give away or abandon, if the "property damage" arises out of any part of those premises;
- (3) Property loaned to you;



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- (4) Personal property in the care, custody or control of the insured;
- (5) That particular part of real property on which you or any contractors or subcontractors working directly or indirectly on your behalf are performing operations, if the "property damage" arises out of those operations; or
- (6) That particular part of any property that must be restored, repaired or replaced because "your work" was incorrectly performed on it.

Paragraphs (1), (3) and (4) of this exclusion do not apply to "property damage" (other than damage by fire) to premises, including the contents of such premises, rented to you for a period of seven or fewer consecutive days. A separate limit of insurance applies to Damage To Premises Rented To You as described in Section III - Limits Of Insurance.

Paragraph (2) of this exclusion does not apply if the premises are "your work" and were never occupied, rented or held for rental by you.

Paragraphs (3), (4), (5) and (6) of this exclusion do not apply to liability assumed under a sidetrack agreement.

Paragraph (6) of this exclusion does not apply to "property damage" included in the "products-completed operations hazard".

k. Damage To Your Product

"Property damage" to "your product" arising out of it or any part of it.

l. Damage To Your Work

"Property damage" to "your work" arising out of it or any part of it and included in the "products-completed operations hazard".

This exclusion does not apply if the damaged work or the work out of which the damage arises was performed on your behalf by a subcontractor.

m. Damage To Impaired Property Or Property Not Physically Injured

"Property damage" to "impaired property" or property that has not been physically injured, arising out of:

- (1) A defect, deficiency, inadequacy or dangerous condition in "your product" or "your work"; or
- (2) A delay or failure by you or anyone acting on your behalf to perform a contract or agreement in accordance with its terms.

This exclusion does not apply to the loss of use of other property arising out of sudden and accidental physical injury to "your product" or "your work" after it has been put to its intended use.

n. Recall Of Products, Work Or Impaired Property

Damages claimed for any loss, cost or expense incurred by you or others for the loss of use, withdrawal, recall, inspection, repair, replacement, adjustment, removal or disposal of:

- (1) "Your product";
- (2) "Your work"; or
- (3) "Impaired property";

if such product, work, or property is withdrawn or recalled from the market or from use by any person or organization because of a known or suspected defect, deficiency, inadequacy or dangerous condition in it.

o. Personal And Advertising Injury

"Bodily injury" arising out of "personal and advertising injury".

p. Electronic Data

Damages arising out of the loss of, loss of use of, damage to, corruption of, inability to access, or inability to manipulate electronic data.

However, this exclusion does not apply to liability for damages because of "bodily injury".

As used in this exclusion, electronic data means information, facts or programs stored as or on, created or used on, or transmitted to or from computer software, including systems and applications software, hard or floppy disks, CD-ROMs, tapes, drives, cells, data processing devices or any other media which are used with electronically controlled equipment.

q. Recording And Distribution Of Material Or Information In Violation Of Law

"Bodily injury" or "property damage" arising directly or indirectly out of any action or omission that violates or is alleged to violate:

- (1) The Telephone Consumer Protection Act (TCPA), including any amendment of or addition to such law;
- (2) The CAN-SPAM Act of 2003, including any amendment of or addition to such law;
- (3) The Fair Credit Reporting Act (FCRA), and any amendment of or addition to such law, including the Fair and Accurate Credit Transactions Act (FACTA); or



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- (4) Any federal, state or local statute, ordinance or regulation, other than the TCPA, CAN-SPAM Act of 2003 or FCRA and their amendments and additions, that addresses, prohibits, or limits the printing, dissemination, disposal, collecting, recording sending, transmitting, communicating or distribution of material or information.

Exclusions c. through n. do not apply to damage by fire to premises while rented to you or temporarily occupied by you with permission of the owner. A separate limit of insurance applies to this coverage as described in Section III - Limits Of Insurance.

COVERAGE B - PERSONAL AND ADVERTISING INJURY LIABILITY

1. Insuring Agreement

- a. We will pay those sums that the insured becomes legally obligated to pay as damages because of "personal and advertising injury" to which this insurance applies. We will have the right and duty to defend the insured against any "suit" seeking those damages. However, we will have no duty to defend the insured against any "suit" seeking damages for "personal and advertising injury" to which this insurance does not apply. We may, at our discretion, investigate any offense and settle any claim or "suit" that may result. But:
- (1) The amount we will pay for damages is limited as described in Section III - Limits Of Insurance; and
 - (2) Our right and duty to defend end when we have used up the applicable limit of insurance in the payment of judgments or settlements under Coverages A or B or medical expenses under Coverage C.
- No other obligation or liability to pay sums or perform acts or services is covered unless explicitly provided for under Supplementary Payments - Coverages A and B.
- b. This insurance applies to "personal and advertising injury" caused by an offense arising out of your business but only if the offense was committed in the "coverage territory" during the policy period.

2. Exclusions

This insurance does not apply to:

- a. **Knowing Violation Of Rights Of Another**
"Personal and advertising injury" caused by or at the direction of the insured with the knowledge that the act would violate the rights of another and would inflict "personal and advertising injury".
- b. **Material Published With Knowledge Of Falsity**
"Personal and advertising injury" arising out of oral or written publication, in any manner, of material, if done by or at the direction of the insured with knowledge of its falsity.
- c. **Material Published Prior To Policy Period**
"Personal and advertising injury" arising out of oral or written publication, in any manner, of material whose first publication took place before the beginning of the policy period.
- d. **Criminal Acts**
"Personal and advertising injury" arising out of a criminal act committed by or at the direction of the insured.
- e. **Contractual Liability**
"Personal and advertising injury" for which the insured has assumed liability in a contract or agreement. This exclusion does not apply to liability for damages that the insured would have in the absence of the contract or agreement.
- f. **Breach Of Contract**
"Personal and advertising injury" arising out of a breach of contract, except an implied contract to use another's advertising idea in your "advertisement".
- g. **Quality Or Performance Of Goods - Failure To Conform To Statements**
"Personal and advertising injury" arising out of the failure of goods, products or services to conform with any statement of quality or performance made in your "advertisement".
- h. **Wrong Description Of Prices**
"Personal and advertising injury" arising out of the wrong description of the price of goods, products or services stated in your "advertisement".



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i. Infringement Of Copyright, Patent, Trademark Or Trade Secret

"Personal and advertising injury" arising out of the infringement of copyright, patent, trademark, trade secret or other intellectual property rights. Under this exclusion, such other intellectual property rights do not include the use of another's advertising idea in your "advertisement".

However, this exclusion does not apply to infringement, in your "advertisement", of copyright, trade dress or slogan.

j. Insureds In Media And Internet Type Businesses

"Personal and advertising injury" committed by an insured whose business is:

- (1) Advertising, broadcasting, publishing or telecasting;
- (2) Designing or determining content of web sites for others; or
- (3) An Internet search, access, content or service provider.

However, this exclusion does not apply to Paragraphs 14.a., b. and c. of "personal and advertising injury" under the Definitions section.

For the purposes of this exclusion, the placing of frames, borders or links, or advertising, for you or others anywhere on the Internet, is not by itself, considered the business of advertising, broadcasting, publishing or telecasting.

k. Electronic Chatrooms Or Bulletin Boards

"Personal and advertising injury" arising out of an electronic chatroom or bulletin board the insured hosts, owns, or over which the insured exercises control.

l. Unauthorized Use Of Another's Name Or Product

"Personal and advertising injury" arising out of the unauthorized use of another's name or product in your e-mail address, domain name or metatag, or any other similar tactics to mislead another's potential customers.

m. Pollution

"Personal and advertising injury" arising out of the actual, alleged or threatened discharge, dispersal, seepage, migration, release or escape of "pollutants" at any time.

n. Pollution-related

Any loss, cost or expense arising out of any:

- (1) Request, demand, order or statutory or regulatory requirement that any insured or others test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to, or assess the effects of, "pollutants"; or
- (2) Claim or suit by or on behalf of a governmental authority for damages because of testing for, monitoring, cleaning up, removing, containing, treating, detoxifying or neutralizing, or in any way responding to, or assessing the effects of, "pollutants".

o. War

"Personal and advertising injury", however caused, arising, directly or indirectly, out of:

- (1) War, including undeclared or civil war;
- (2) Warlike action by a military force, including action in hindering or defending against an actual or expected attack, by any government, sovereign or other authority using military personnel or other agents; or
- (3) Insurrection, rebellion, revolution, usurped power, or action taken by governmental authority in hindering or defending against any of these.

p. Recording And Distribution Of Material Or Information In Violation Of Law

"Personal and advertising injury" arising directly or indirectly out of any action or omission that violates or is alleged to violate:

- (1) The Telephone Consumer Protection Act (TCPA), including any amendment of or addition to such law;
- (2) The CAN-SPAM Act of 2003, including any amendment of or addition to such law;
- (3) The Fair Credit Reporting Act (FCRA), and any amendment of or addition to such law, including the Fair and Accurate Credit Transactions Act (FACTA); or
- (4) Any federal, state or local statute, ordinance or regulation, other than the TCPA, CAN-SPAM Act of 2003 or FCRA and their amendments and additions, that addresses, prohibits, or limits the printing, dissemination, disposal, collecting, recording, sending, transmitting, communicating or distribution of material or information.



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COVERAGE C - MEDICAL PAYMENTS**1. Insuring Agreement**

- a. We will pay medical expenses as described below for "bodily injury" caused by an accident:

- (1) On premises you own or rent;
 - (2) On ways next to premises you own or rent; or
 - (3) Because of your operations;
- provided that:

- (a) The accident takes place in the "coverage territory" and during the policy period;
- (b) The expenses are incurred and reported to us within one year of the date of the accident; and
- (c) The injured person submits to examination, at our expense, by physicians of our choice as often as we reasonably require.

- b. We will make these payments regardless of fault. These payments will not exceed the applicable limit of insurance. We will pay reasonable expenses for:

- (1) First aid administered at the time of an accident;
- (2) Necessary medical, surgical, X-ray and dental services, including prosthetic devices; and
- (3) Necessary ambulance, hospital, professional nursing and funeral services.

2. Exclusions

We will not pay expenses for "bodily injury":

a. Any Insured

To any insured, except "volunteer workers".

b. Hired Person

To a person hired to do work for or on behalf of any insured or a tenant of any insured.

c. Injury On Normally Occupied Premises

To a person injured on that part of premises you own or rent that the person normally occupies.

d. Workers' Compensation And Similar Laws

To a person, whether or not an "employee" of any insured, if benefits for the "bodily injury" are payable or must be provided under a workers' compensation or disability benefits law or a similar law.

e. Athletics Activities

To a person injured while practicing, instructing or participating in any physical exercises or games, sports, or athletic contests.

f. Products-Completed Operations Hazard

Included within the "products-completed operations hazard".

g. Coverage A Exclusions

Excluded under Coverage A.

SUPPLEMENTARY PAYMENTS - COVERAGES A AND B

1. We will pay, with respect to any claim we investigate or settle, or any "suit" against an insured we defend:

- a. All expenses we incur.
- b. Up to \$250 for cost of bail bonds required because of accidents or traffic law violations arising out of the use of any vehicle to which the Bodily Injury Liability Coverage applies. We do not have to furnish these bonds.
- c. The cost of bonds to release attachments, but only for bond amounts within the applicable limit of insurance. We do not have to furnish these bonds.
- d. All reasonable expenses incurred by the insured at our request to assist us in the investigation or defense of the claim or "suit", including actual loss of earnings up to \$250 a day because of time off from work.
- e. All court costs taxed against the insured in the "suit". However, these payments do not include attorneys' fees or attorneys' expenses taxed against the insured.
- f. Prejudgment interest awarded against the insured on that part of the judgment we pay. If we make an offer to pay the applicable limit of insurance, we will not pay any prejudgment interest based on that period of time after the offer.



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- g. All interest on the full amount of any judgment that accrues after entry of the judgment and before we have paid, offered to pay, or deposited in court the part of the judgment that is within the applicable limit of insurance.

These payments will not reduce the limits of insurance.

2. If we defend an insured against a "suit" and an indemnitee of the insured is also named as a party to the "suit", we will defend that indemnitee if all of the following conditions are met:

- The "suit" against the indemnitee seeks damages for which the insured has assumed the liability of the indemnitee in a contract or agreement that is an "insured contract";
- This insurance applies to such liability assumed by the insured;
- The obligation to defend, or the cost of the defense of, that indemnitee, has also been assumed by the insured in the same "insured contract";
- The allegations in the "suit" and the information we know about the "occurrence" are such that no conflict appears to exist between the interests of the insured and the interests of the indemnitee;
- The indemnitee and the insured ask us to conduct and control the defense of that indemnitee against such "suit" and agree that we can assign the same counsel to defend the insured and the indemnitee; and

- f. The indemnitee:

(1) Agrees in writing to:

- Cooperate with us in the investigation, settlement or defense of the "suit";
- Immediately send us copies of any demands, notices, summonses or legal papers received in connection with the "suit";
- Notify any other insurer whose coverage is available to the indemnitee; and
- Cooperate with us with respect to coordinating other applicable insurance available to the indemnitee; and

(2) Provides us with written authorization to:

- Obtain records and other information related to the "suit"; and
- Conduct and control the defense of the indemnitee in such "suit".

So long as the above conditions are met, attorneys' fees incurred by us in the defense of that indemnitee, necessary litigation expenses incurred by us and necessary litigation expenses incurred by the indemnitee at our request will be paid as Supplementary Payments. Notwithstanding the provisions of Paragraph 2.b.(2) of Section I - Coverage A - Bodily Injury And Property Damage Liability, such payments will not be deemed to be damages for "bodily injury" and "property damage" and will not reduce the limits of insurance.

Our obligation to defend an insured's indemnitee and to pay for attorneys' fees and necessary litigation expenses as Supplementary Payments ends when we have used up the applicable limit of insurance in the payment of judgments or settlements or the conditions set forth above, or the terms of the agreement described in Paragraph f. above, are no longer met.

SECTION II - WHO IS AN INSURED

1. If you are designated in the Declarations as:

- An individual, you and your spouse are insureds, but only with respect to the conduct of a business of which you are the sole owner.
- A partnership or joint venture, you are an insured. Your members, your partners, and their spouses are also insureds, but only with respect to the conduct of your business.
- A limited liability company, you are an insured. Your members are also insureds, but only with respect to the conduct of your business. Your managers are insureds, but only with respect to their duties as your managers.
- An organization other than a partnership, joint venture or limited liability company, you are an insured. Your "executive officers" and directors are insureds, but only with respect to their duties as your officers or directors. Your stockholders are also insureds, but only with respect to their liability as stockholders.
- A trust, you are an insured. Your trustees are also insureds, but only with respect to their duties as trustees.



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2. Each of the following is also an insured:

- a. Your "volunteer workers" only while performing duties related to the conduct of your business, or your "employees", other than either your "executive officers" (if you are an organization other than a partnership, joint venture or limited liability company) or your managers (if you are a limited liability company), but only for acts within the scope of their employment by you or while performing duties related to the conduct of your business. However, none of these "employees" or "volunteer workers" are insureds for:

- (1) "Bodily injury" or "personal and advertising injury":
- (a) To you, to your partners or members (if you are a partnership or joint venture), to your members (if you are a limited liability company), to a co-"employee" while in the course of his or her employment or performing duties related to the conduct of your business, or to your other "volunteer workers" while performing duties related to the conduct of your business;
 - (b) To the spouse, child, parent, brother or sister of that co-"employee" or "volunteer worker" as a consequence of Paragraph (1)(a) above;
 - (c) For which there is any obligation to share damages with or repay someone else who must pay damages because of the injury described in Paragraph (1)(a) or (b) above; or
 - (d) Arising out of his or her providing or failing to provide professional health care services.

(2) "Property damage" to property:

- (a) Owned, occupied or used by;
 - (b) Rented to, in the care, custody or control of, or over which physical control is being exercised for any purpose by; you, any of your "employees", "volunteer workers", any partner or member (if you are a partnership or joint venture), or any member (if you are a limited liability company).
- b. Any person (other than your "employee" or "volunteer worker"), or any organization while acting as your real estate manager.

- c. Any person or organization having proper temporary custody of your property if you die, but only:

- (1) With respect to liability arising out of the maintenance or use of that property; and
- (2) Until your legal representative has been appointed.

- d. Your legal representative if you die, but only with respect to duties as such. That representative will have all your rights and duties under this Coverage Part.

3. Any organization you newly acquire or form, other than a partnership, joint venture or limited liability company, and over which you maintain ownership or majority interest, will qualify as a Named Insured if there is no other similar insurance available to that organization. However:

- a. Coverage under this provision is afforded only until the 90th day after you acquire or form the organization or the end of the policy period, whichever is earlier;
- b. Coverage A does not apply to "bodily injury" or "property damage" that occurred before you acquired or formed the organization; and
- c. Coverage B does not apply to "personal and advertising injury" arising out of an offense committed before you acquired or formed the organization.

No person or organization is an insured with respect to the conduct of any current or past partnership, joint venture or limited liability company that is not shown as a Named Insured in the Declarations.

SECTION III - LIMITS OF INSURANCE

1. The Limits of Insurance shown in the Declarations and the rules below fix the most we will pay regardless of the number of:
 - a. Insureds;
 - b. Claims made or "suits" brought; or
 - c. Persons or organizations making claims or bringing "suits".
2. The General Aggregate Limit is the most we will pay for the sum of:
 - a. Medical expenses under Coverage C;
 - b. Damages under Coverage A, except damages because of "bodily injury" or "property damage" included in the "products-completed operations hazard"; and
 - c. Damages under Coverage B.



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3. The Products-Completed Operations Aggregate Limit is the most we will pay under Coverage A for damages because of "bodily injury" and "property damage" included in the "products-completed operations hazard".
4. Subject to Paragraph 2. above, the Personal And Advertising Injury Limit is the most we will pay under Coverage B for the sum of all damages because of all "personal and advertising injury" sustained by any one person or organization.
5. Subject to Paragraph 2. or 3. above, whichever applies, the Each Occurrence Limit is the most we will pay for the sum of:
 - a. Damages under Coverage A; and
 - b. Medical expenses under Coverage C because of all "bodily injury" and "property damage" arising out of any one "occurrence".
6. Subject to Paragraph 5. above, the Damage To Premises Rented To You Limit is the most we will pay under Coverage A for damages because of "property damage" to any one premises, while rented to you, or in the case of damage by fire, while rented to you or temporarily occupied by you with permission of the owner.
7. Subject to Paragraph 5. above, the Medical Expense Limit is the most we will pay under Coverage C for all medical expenses because of "bodily injury" sustained by any one person.

The Limits of Insurance of this Coverage Part apply separately to each consecutive annual period and to any remaining period of less than 12 months, starting with the beginning of the policy period shown in the Declarations, unless the policy period is extended after issuance for an additional period of less than 12 months. In that case, the additional period will be deemed part of the last preceding period for purposes of determining the Limits of Insurance.

SECTION IV - COMMERCIAL GENERAL LIABILITY CONDITIONS

1. Bankruptcy

Bankruptcy or insolvency of the insured or of the insured's estate will not relieve us of our obligations under this Coverage Part.

2. Duties In The Event Of Occurrence, Offense, Claim Or Suit

- a. You must see to it that we are notified as soon as practicable of an "occurrence" or an offense which may result in a claim. To the extent possible, notice should include:
 - (1) How, when and where the "occurrence" or offense took place;
 - (2) The names and addresses of any injured persons and witnesses; and

- (3) The nature and location of any injury or damage arising out of the "occurrence" or offense.
- b. If a claim is made or "suit" is brought against any insured, you must:
 - (1) Immediately record the specifics of the claim or "suit" and the date received; and
 - (2) Notify us as soon as practicable.

You must see to it that we receive written notice of the claim or "suit" as soon as practicable.
- c. You and any other involved insured must:
 - (1) Immediately send us copies of any demands, notices, summonses or legal papers received in connection with the claim or "suit";
 - (2) Authorize us to obtain records and other information;
 - (3) Cooperate with us in the investigation or settlement of the claim or defense against the "suit"; and
 - (4) Assist us, upon our request, in the enforcement of any right against any person or organization which may be liable to the insured because of injury or damage to which this insurance may also apply.
- d. No insured will, except at that insured's own cost, voluntarily make a payment, assume any obligation, or incur any expense, other than for first aid, without our consent.

3. Legal Action Against Us

No person or organization has a right under this Coverage Part:

- a. To join us as a party or otherwise bring us into a "suit" asking for damages from an insured; or
- b. To sue us on this Coverage Part unless all of its terms have been fully complied with.

A person or organization may sue us to recover on an agreed settlement or on a final judgment against an insured; but we will not be liable for damages that are not payable under the terms of this Coverage Part or that are in excess of the applicable limit of insurance. An agreed settlement means a settlement and release of liability signed by us, the insured and the claimant or the claimant's legal representative.



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4. Other Insurance

If other valid and collectible insurance is available to the insured for a loss we cover under Coverages A or B of this Coverage Part, our obligations are limited as follows:

a. Primary Insurance

This insurance is primary except when Paragraph b. below applies. If this insurance is primary, our obligations are not affected unless any of the other insurance is also primary. Then, we will share with all that other insurance by the method described in Paragraph c. below.

b. Excess Insurance

(1) This insurance is excess over:

- (a) Any of the other insurance, whether primary, excess, contingent or on any other basis:
 - (i) That is Fire, Extended Coverage, Builder's Risk, Installation Risk or similar coverage for "your work";
 - (ii) That is Fire insurance for premises rented to you or temporarily occupied by you with permission of the owner;
 - (iii) That is insurance purchased by you to cover your liability as a tenant for "property damage" to premises rented to you or temporarily occupied by you with permission of the owner; or
 - (iv) If the loss arises out of the maintenance or use of aircraft, "autos" or watercraft to the extent not subject to Exclusion g. of Section I - Coverage A - Bodily Injury And Property Damage Liability.

(b) Any other primary insurance available to you covering liability for damages arising out of the premises or operations, or the products and completed operations, for which you have been added as an additional insured.

(2) When this insurance is excess, we will have no duty under Coverages A or B to defend the insured against any "suit" if any other insurer has a duty to defend the insured against that "suit". If no other insurer defends, we will undertake to do so, but we will be entitled to the insured's rights against all those other insurers.

(3) When this insurance is excess over other insurance, we will pay only our share of the amount of the loss, if any, that exceeds the sum of:

- (a) The total amount that all such other insurance would pay for the loss in the absence of this insurance; and
- (b) The total of all deductible and self-insured amounts under all that other insurance.

(4) We will share the remaining loss, if any, with any other insurance that is not described in this Excess Insurance provision and was not bought specifically to apply in excess of the Limits of Insurance shown in the Declarations of this Coverage Part.

c. Method Of Sharing

If all of the other insurance permits contribution by equal shares, we will follow this method also. Under this approach each insurer contributes equal amounts until it has paid its applicable limit of insurance or none of the loss remains, whichever comes first.

If any of the other insurance does not permit contribution by equal shares, we will contribute by limits. Under this method, each insurer's share is based on the ratio of its applicable limit of insurance to the total applicable limits of insurance of all insurers.

5. Premium Audit

- a. We will compute all premiums for this Coverage Part in accordance with our rules and rates.
- b. Premium shown in this Coverage Part as advance premium is a deposit premium only. At the close of each audit period we will compute the earned premium for that period and send notice to the first Named Insured. The due date for audit and retrospective premiums is the date shown as the due date on the bill. If the sum of the advance and audit premiums paid for the policy period is greater than the earned premium, we will return the excess to the first Named Insured.
- c. The first Named Insured must keep records of the information we need for premium computation, and send us copies at such times as we may request.

6. Representations

By accepting this policy, you agree:

- a. The statements in the Declarations are accurate and complete;



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- b. Those statements are based upon representations you made to us; and
- c. We have issued this policy in reliance upon your representations.

7. Separation Of Insureds

Except with respect to the Limits of Insurance, and any rights or duties specifically assigned in this Coverage Part to the first Named Insured, this insurance applies:

- a. As if each Named Insured were the only Named Insured; and
- b. Separately to each insured against whom claim is made or "suit" is brought.

8. Transfer Of Rights Of Recovery Against Others To Us

If the insured has rights to recover all or part of any payment we have made under this Coverage Part, those rights are transferred to us. The insured must do nothing after loss to impair them. At our request, the insured will bring "suit" or transfer those rights to us and help us enforce them.

9. When We Do Not Renew

If we decide not to renew this Coverage Part, we will mail or deliver to the first Named Insured shown in the Declarations written notice of the nonrenewal not less than 30 days before the expiration date.

If notice is mailed, proof of mailing will be sufficient proof of notice.

SECTION V - DEFINITIONS

1. "Advertisement" means a notice that is broadcast or published to the general public or specific market segments about your goods, products or services for the purpose of attracting customers or supporters. For the purposes of this definition:
 - a. Notices that are published include material placed on the Internet or on similar electronic means of communication; and
 - b. Regarding web sites, only that part of a web site that is about your goods, products or services for the purposes of attracting customers or supporters is considered an advertisement.
2. "Auto" means:
 - a. A land motor vehicle, trailer or semitrailer designed for travel on public roads, including any attached machinery or equipment; or
 - b. Any other land vehicle that is subject to a compulsory or financial responsibility law or other motor vehicle insurance law where it is licensed or principally garaged.

However, "auto" does not include "mobile equipment".

3. "Bodily injury" means bodily injury, sickness or disease sustained by a person, including death resulting from any of these at any time.
4. "Coverage territory" means:
 - a. The United States of America (including its territories and possessions), Puerto Rico and Canada;
 - b. International waters or airspace, but only if the injury or damage occurs in the course of travel or transportation between any places included in Paragraph a. above; or
 - c. All other parts of the world if the injury or damage arises out of:
 - (1) Goods or products made or sold by you in the territory described in Paragraph a. above;
 - (2) The activities of a person whose home is in the territory described in Paragraph a. above, but is away for a short time on your business; or
 - (3) "Personal and advertising injury" offenses that take place through the Internet or similar electronic means of communication; provided the insured's responsibility to pay damages is determined in a "suit" on the merits, in the territory described in Paragraph a. above or in a settlement we agree to.
5. "Employee" includes a "leased worker". "Employee" does not include a "temporary worker".
6. "Executive officer" means a person holding any of the officer positions created by your charter, constitution, bylaws or any other similar governing document.
7. "Hostile fire" means one which becomes uncontrollable or breaks out from where it was intended to be.
8. "Impaired property" means tangible property, other than "your product" or "your work", that cannot be used or is less useful because:
 - a. It incorporates "your product" or "your work" that is known or thought to be defective, deficient, inadequate or dangerous; or
 - b. You have failed to fulfill the terms of a contract or agreement;

if such property can be restored to use by the repair, replacement, adjustment or removal of "your product" or "your work" or your fulfilling the terms of the contract or agreement.



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9. "Insured contract" means:

- a. A contract for a lease of premises. However, that portion of the contract for a lease of premises that indemnifies any person or organization for damage by fire to premises while rented to you or temporarily occupied by you with permission of the owner is not an "insured contract";
- b. A sidetrack agreement;
- c. Any easement or license agreement, except in connection with construction or demolition operations on or within 50 feet of a railroad;
- d. An obligation, as required by ordinance, to indemnify a municipality, except in connection with work for a municipality;
- e. An elevator maintenance agreement;
- f. That part of any other contract or agreement pertaining to your business (including an indemnification of a municipality in connection with work performed for a municipality) under which you assume the tort liability of another party to pay for "bodily injury" or "property damage" to a third person or organization. Tort liability means a liability that would be imposed by law in the absence of any contract or agreement.

Paragraph f. does not include that part of any contract or agreement:

- (1) That indemnifies a railroad for "bodily injury" or "property damage" arising out of construction or demolition operations, within 50 feet of any railroad property and affecting any railroad bridge or trestle, tracks, road-beds, tunnel, underpass or crossing;
- (2) That indemnifies an architect, engineer or surveyor for injury or damage arising out of:
 - (a) Preparing, approving, or failing to prepare or approve, maps, shop drawings, opinions, reports, surveys, field orders, change orders or drawings and specifications; or
 - (b) Giving directions or instructions, or failing to give them, if that is the primary cause of the injury or damage; or
- (3) Under which the insured, if an architect, engineer or surveyor, assumes liability for an injury or damage arising out of the insured's rendering or failure to render professional services, including those listed in (2) above and supervisory, inspection, architectural or engineering activities.

10. "Leased worker" means a person leased to you by a labor leasing firm under an agreement between you and the labor leasing firm, to perform duties related to the conduct of your business. "Leased worker" does not include a "temporary worker".

11. "Loading or unloading" means the handling of property:

- a. After it is moved from the place where it is accepted for movement into or onto an aircraft, watercraft or "auto";
- b. While it is in or on an aircraft, watercraft or "auto"; or
- c. While it is being moved from an aircraft, watercraft or "auto" to the place where it is finally delivered;

but "loading or unloading" does not include the movement of property by means of a mechanical device, other than a hand truck, that is not attached to the aircraft, watercraft or "auto".

12. "Mobile equipment" means any of the following types of land vehicles, including any attached machinery or equipment:

- a. Bulldozers, farm machinery, forklifts and other vehicles designed for use principally off public roads;
- b. Vehicles maintained for use solely on or next to premises you own or rent;
- c. Vehicles that travel on crawler treads;
- d. Vehicles, whether self-propelled or not, maintained primarily to provide mobility to permanently mounted:
 - (1) Power cranes, shovels, loaders, diggers or drills; or
 - (2) Road construction or resurfacing equipment such as graders, scrapers or rollers;
- e. Vehicles not described in Paragraph a., b., c. or d. above that are not self-propelled and are maintained primarily to provide mobility to permanently attached equipment of the following types:
 - (1) Air compressors, pumps and generators, including spraying, welding, building cleaning, geophysical exploration, lighting and well servicing equipment; or
 - (2) Cherry pickers and similar devices used to raise or lower workers;
- f. Vehicles not described in Paragraph a., b., c. or d. above maintained primarily for purposes other than the transportation of persons or cargo.



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However, self-propelled vehicles with the following types of permanently attached equipment are not "mobile equipment" but will be considered "autos":

- (1) Equipment designed primarily for:
 - (a) Snow removal;
 - (b) Road maintenance, but not construction or resurfacing; or
 - (c) Street cleaning;
- (2) Cherry pickers and similar devices mounted on automobile or truck chassis and used to raise or lower workers; and
- (3) Air compressors, pumps and generators, including spraying, welding, building cleaning, geophysical exploration, lighting and well servicing equipment.

However, "mobile equipment" does not include any land vehicles that are subject to a compulsory or financial responsibility law or other motor vehicle insurance law where it is licensed or principally garaged. Land vehicles subject to a compulsory or financial responsibility law or other motor vehicle insurance law are considered "autos".

13. "Occurrence" means an accident, including continuous or repeated exposure to substantially the same general harmful conditions.
14. "Personal and advertising injury" means injury, including consequential "bodily injury", arising out of one or more of the following offenses:
 - a. False arrest, detention or imprisonment;
 - b. Malicious prosecution;
 - c. The wrongful eviction from, wrongful entry into, or invasion of the right of private occupancy of a room, dwelling or premises that a person occupies, committed by or on behalf of its owner, landlord or lessor;
 - d. Oral or written publication, in any manner, of material that slanders or libels a person or organization or disparages a person's or organization's goods, products or services;
 - e. Oral or written publication, in any manner, of material that violates a person's right of privacy;
 - f. The use of another's advertising idea in your "advertisement"; or
 - g. Infringing upon another's copyright, trade dress or slogan in your "advertisement".
15. "Pollutants" mean any solid, liquid, gaseous or thermal irritant or contaminant, including smoke, vapor, soot, fumes, acids, alkalis, chemicals and waste. Waste includes materials to be recycled, re-conditioned or reclaimed.

16. "Products-completed operations hazard":

- a. Includes all "bodily injury" and "property damage" occurring away from premises you own or rent and arising out of "your product" or "your work" except:

- (1) Products that are still in your physical possession; or
- (2) Work that has not yet been completed or abandoned. However, "your work" will be deemed completed at the earliest of the following times:
 - (a) When all of the work called for in your contract has been completed.
 - (b) When all of the work to be done at the job site has been completed if your contract calls for work at more than one job site.
 - (c) When that part of the work done at a job site has been put to its intended use by any person or organization other than another contractor or subcontractor working on the same project.

Work that may need service, maintenance, correction, repair or replacement, but which is otherwise complete, will be treated as completed.

- b. Does not include "bodily injury" or "property damage" arising out of:

- (1) The transportation of property, unless the injury or damage arises out of a condition in or on a vehicle not owned or operated by you, and that condition was created by the "loading or unloading" of that vehicle by any insured;
- (2) The existence of tools, uninstalled equipment or abandoned or unused materials; or
- (3) Products or operations for which the classification, listed in the Declarations or in a policy Schedule, states that products-completed operations are subject to the General Aggregate Limit.

17. "Property damage" means:

- a. Physical injury to tangible property, including all resulting loss of use of that property. All such loss of use shall be deemed to occur at the time of the physical injury that caused it; or
- b. Loss of use of tangible property that is not physically injured. All such loss of use shall be deemed to occur at the time of the "occurrence" that caused it.

For the purposes of this insurance, electronic data is not tangible property.



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However, self-propelled vehicles with the following types of permanently attached equipment are not "mobile equipment" but will be considered "autos":

- (1) Equipment designed primarily for:
 - (a) Snow removal;
 - (b) Road maintenance, but not construction or resurfacing; or
 - (c) Street cleaning;
- (2) Cherry pickers and similar devices mounted on automobile or truck chassis and used to raise or lower workers; and
- (3) Air compressors, pumps and generators, including spraying, welding, building cleaning, geophysical exploration, lighting and well servicing equipment.

However, "mobile equipment" does not include any land vehicles that are subject to a compulsory or financial responsibility law or other motor vehicle insurance law where it is licensed or principally garaged. Land vehicles subject to a compulsory or financial responsibility law or other motor vehicle insurance law are considered "autos".

13. "Occurrence" means an accident, including continuous or repeated exposure to substantially the same general harmful conditions.
14. "Personal and advertising injury" means injury, including consequential "bodily injury", arising out of one or more of the following offenses:
 - a. False arrest, detention or imprisonment;
 - b. Malicious prosecution;
 - c. The wrongful eviction from, wrongful entry into, or invasion of the right of private occupancy of a room, dwelling or premises that a person occupies, committed by or on behalf of its owner, landlord or lessor;
 - d. Oral or written publication, in any manner, of material that slanders or libels a person or organization or disparages a person's or organization's goods, products or services;
 - e. Oral or written publication, in any manner, of material that violates a person's right of privacy;
 - f. The use of another's advertising idea in your "advertisement"; or
 - g. Infringing upon another's copyright, trade dress or slogan in your "advertisement".
15. "Pollutants" mean any solid, liquid, gaseous or thermal irritant or contaminant, including smoke, vapor, soot, fumes, acids, alkalis, chemicals and waste. Waste includes materials to be recycled, reconditioned or reclaimed.

16. "Products-completed operations hazard":

- a. Includes all "bodily injury" and "property damage" occurring away from premises you own or rent and arising out of "your product" or "your work" except:
 - (1) Products that are still in your physical possession; or
 - (2) Work that has not yet been completed or abandoned. However, "your work" will be deemed completed at the earliest of the following times:
 - (a) When all of the work called for in your contract has been completed.
 - (b) When all of the work to be done at the job site has been completed if your contract calls for work at more than one job site.
 - (c) When that part of the work done at a job site has been put to its intended use by any person or organization other than another contractor or subcontractor working on the same project.

Work that may need service, maintenance, correction, repair or replacement, but which is otherwise complete, will be treated as completed.

- b. Does not include "bodily injury" or "property damage" arising out of:
 - (1) The transportation of property, unless the injury or damage arises out of a condition in or on a vehicle not owned or operated by you, and that condition was created by the "loading or unloading" of that vehicle by any insured;
 - (2) The existence of tools, uninstalled equipment or abandoned or unused materials; or
 - (3) Products or operations for which the classification, listed in the Declarations or in a policy Schedule, states that products-completed operations are subject to the General Aggregate Limit.

17. "Property damage" means:

- a. Physical injury to tangible property, including all resulting loss of use of that property. All such loss of use shall be deemed to occur at the time of the physical injury that caused it; or
- b. Loss of use of tangible property that is not physically injured. All such loss of use shall be deemed to occur at the time of the "occurrence" that caused it.

For the purposes of this insurance, electronic data is not tangible property.



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COMMERCIAL GENERAL LIABILITY
CG 20 01 04 13

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

PRIMARY AND NONCONTRIBUTORY - OTHER INSURANCE CONDITION

This endorsement modifies insurance provided under the following:

· COMMERCIAL GENERAL LIABILITY COVERAGE PART
PRODUCTS/ COMPLETED OPERATIONS LIABILITY COVERAGE PART

The following is added to the **Other Insurance** Condition and supersedes any provision to the contrary:

Primary And Noncontributory Insurance

This insurance is primary to and will not seek contribution from any other insurance available to an additional insured under your policy provided that:

(1) The additional insured is a Named Insured under such other insurance; and

(2) You have agreed in writing in a contract or agreement that this insurance would be primary and would not seek contribution from any other insurance available to the additional insured.



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ADDITIONAL INSURED - OWNERS, LESSEES OR CONTRACTORS - AUTOMATIC STATUS FOR OTHER PARTIES WHEN REQUIRED IN WRITTEN CONSTRUCTION AGREEMENT

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

A. Section II - Who Is An Insured is amended to include as an additional insured:

1. Any person or organization for whom you are performing operations when you and such person or organization have agreed in writing in a contract or agreement that such person or organization be added as an additional insured on your policy; and
2. Any other person or organization you are required to add as an additional insured under the contract or agreement described in Paragraph 1. above.

Such person(s) or organization(s) is an additional insured only with respect to liability for "bodily injury", "property damage" or "personal and advertising injury" caused, in whole or in part, by:

- a. Your acts or omissions; or
- b. The acts or omissions of those acting on your behalf;

in the performance of your ongoing operations for the additional insured.

However, the insurance afforded to such additional insured described above:

- a. Only applies to the extent permitted by law; and
- b. Will not be broader than that which you are required by the contract or agreement to provide for such additional insured.

A person's or organization's status as an additional insured under this endorsement ends when your operations for the person or organization described in Paragraph 1. above are completed.

B. With respect to the insurance afforded to these additional insureds, the following additional exclusions apply:

This insurance does not apply to:

1. "Bodily injury", "property damage" or "personal and advertising injury" arising out of the rendering of, or the failure to render, any professional architectural, engineering or surveying services, including:
 - a. The preparing, approving, or failing to prepare or approve, maps, shop drawings, opinions, reports, surveys, field orders, change orders or drawings and specifications; or
 - b. Supervisory, inspection, architectural or engineering activities.

This exclusion applies even if the claims against any insured allege negligence or other wrongdoing in the supervision, hiring, employment, training or monitoring of others by that insured, if the "occurrence" which caused the "bodily injury" or "property damage", or the offense which caused the "personal and advertising injury", involved the rendering of, or the failure to render, any professional architectural, engineering or surveying services.

2. "Bodily injury" or "property damage" occurring after:
 - a. All work, including materials, parts or equipment furnished in connection with such work, on the project (other than service, maintenance or repairs) to be performed by or on behalf of the additional insured(s) at the location of the covered operations has been completed; or



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b. That portion of "your work" out of which the injury or damage arises has been put to its intended use by any person or organization other than another contractor or subcontractor engaged in performing operations for a principal as a part of the same project.

C. With respect to the insurance afforded to these additional insureds, the following is added to **Section III - Limits Of Insurance:**

The most we will pay on behalf of the additional insured is the amount of insurance:

1. Required by the contract or agreement described in Paragraph A.1.; or

2. Available under the applicable Limits of Insurance shown in the Declarations; whichever is less.

This endorsement shall not increase the applicable Limits of Insurance shown in the Declarations.



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COMMERCIAL GENERAL LIABILITY
CG 21 49 09 99

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TOTAL POLLUTION EXCLUSION ENDORSEMENT

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

Exclusion f. under Paragraph 2., Exclusions of Section I - Coverage A - Bodily Injury And Property Damage Liability is replaced by the following:

This insurance does not apply to:

f. Pollution

- (1) "Bodily injury" or "property damage" which would not have occurred in whole or part but for the actual, alleged or threatened discharge, dispersal, seepage, migration, release or escape of "pollutants" at any time.

- (2) Any loss, cost or expense arising out of any:

- (a) Request, demand, order or statutory or regulatory requirement that any insured or others test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to, or assess the effects of "pollutants"; or
- (b) Claim or suit by or on behalf of a governmental authority for damages because of testing for, monitoring, cleaning up, removing, containing, treating, detoxifying or neutralizing, or in any way responding to, or assessing the effects of, "pollutants".



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POLICY NUMBER: TTT-44-2-180176

COMMERCIAL GENERAL LIABILITY
CG 21 54 01 96

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

EXCLUSION - DESIGNATED OPERATIONS COVERED BY A CONSOLIDATED (WRAP-UP) INSURANCE PROGRAM

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

SCHEDULE

Description and Location of Operation(s):

ALL OPERATIONS COVERED BY A CONSOLIDATED [WRAP-UP] INSURANCE PROGRAM.

(If no entry appears above, information required to complete this endorsement will be shown in the Declarations as applicable to this endorsement.)

The following exclusion is added to paragraph 2., Exclusions of COVERAGE A - BODILY INJURY AND PROPERTY DAMAGE LIABILITY (Section I - Coverages):

This insurance does not apply to "bodily injury" or "property damage" arising out of either your ongoing operations or operations included within the "products-completed operations hazard" at the location described in the Schedule of this endorsement, as a consolidated (wrap-up) insurance program has been provided by the prime contractor/project manager or owner of the construction project in which you are involved.

This exclusion applies whether or not the consolidated (wrap-up) insurance program:

- (1) Provides coverage identical to that provided by this Coverage Part;
- (2) Has limits adequate to cover all claims; or
- (3) Remains in effect.



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COMMERCIAL GENERAL LIABILITY
CG 21 73 01 15

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

EXCLUSION OF CERTIFIED ACTS OF TERRORISM

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART
LIQUOR LIABILITY COVERAGE PART
OWNERS AND CONTRACTORS PROTECTIVE LIABILITY COVERAGE PART
POLLUTION LIABILITY COVERAGE PART
PRODUCTS/ COMPLETED OPERATIONS LIABILITY COVERAGE PART
RAILROAD PROTECTIVE LIABILITY COVERAGE PART
UNDERGROUND STORAGE TANK POLICY

- A.** The following exclusion is added:
This insurance does not apply to:
TERRORISM
"Any injury or damage" arising, directly or indirectly, out of a "certified act of terrorism".
- B.** The following definitions are added:
1. For the purposes of this endorsement, "any injury or damage" means any injury or damage covered under any Coverage Part to which this endorsement is applicable, and includes but is not limited to "bodily injury", "property damage", "personal and advertising injury", "injury" or "environmental damage" as may be defined in any applicable Coverage Part.
 2. "Certified act of terrorism" means an act that is certified by the Secretary of the Treasury, in accordance with the provisions of the federal Terrorism Risk Insurance Act, to be an act of terrorism pursuant to such Act. The criteria contained in the Terrorism Risk Insurance Act for a "certified act of terrorism" include the following:
 - a. The act resulted in insured losses in excess of \$5 million in the aggregate, attributable to all types of insurance subject to the Terrorism Risk Insurance Act; and
 - b. The act is a violent act or an act that is dangerous to human life, property or infrastructure and is committed by an individual or individuals as part of an effort to coerce the civilian population of the United States or to influence the policy or affect the conduct of the United States Government by coercion.
- C.** The terms and limitations of any terrorism exclusion, or the inapplicability or omission of a terrorism exclusion, do not serve to create coverage for injury or damage that is otherwise excluded under this Coverage Part.



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COMMERCIAL GENERAL LIABILITY
CG 21 86 12 04

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

EXCLUSION - EXTERIOR INSULATION AND FINISH SYSTEMS

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

- A.** This insurance does not apply to "bodily injury", "property damage" or "personal and advertising injury" arising out of, caused by, or attributable to, whether in whole or in part, the following:
1. The design, manufacture, construction, fabrication, preparation, distribution and sale, installation, application, maintenance or repair, including remodeling, service, correction or replacement, of any "exterior insulation and finish system" or any part thereof, or any substantially similar system or any part thereof, including the application or use of conditioners, primers, accessories, flashings, coatings, caulking or sealants in connection with such a system; or
 2. "Your product" or "your work" with respect to any exterior component, fixture or feature of any structure if an "exterior insulation and finish system", or any substantially similar system, is used on the part of that structure containing that component, fixture or feature.
- B.** The following definition is added to the **Definitions** Section:
- "Exterior insulation and finish system" means a non-load bearing exterior cladding or finish system, and all component parts therein, used on any part of any structure, and consisting of:
1. A rigid or semi-rigid insulation board made of expanded polystyrene and other materials;
 2. The adhesive and/or mechanical fasteners used to attach the insulation board to the substrate;
 3. A reinforced or unreinforced base coat;
 4. A finish coat providing surface texture to which color may be added; and
 5. Any flashing, caulking or sealant used with the system for any purpose.



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COMMERCIAL GENERAL LIABILITY
CG 22 79 04 13

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EXCLUSION- CONTRACTORS PROFESSIONAL LIABILITY

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

The following exclusion is added to Paragraph 2. Exclusions of Section I - Coverage A - Bodily Injury And Property Damage Liability and Paragraph 2. Exclusions of Section I - Coverage B - Personal And Advertising Injury Liability:

1. This insurance does not apply to "bodily injury", "property damage" or "personal and advertising injury" arising out of the rendering of or failure to render any professional services by you or on your behalf, but only with respect to either or both of the following operations:
 - a. Providing engineering, architectural or surveying services to others in your capacity as an engineer, architect or surveyor; and
 - b. Providing, or hiring independent professionals to provide, engineering, architectural or surveying services in connection with construction work you perform.

This exclusion applies even if the claims against any insured allege negligence or other wrongdoing in the supervision, hiring, employment, training or monitoring of others by that insured, if the "occurrence" which caused the "bodily injury" or "property damage", or the offense which caused the "personal and advertising injury", involved the rendering of or failure to render any professional services by you or on your behalf with respect to the operations described above.

2. Subject to Paragraph 3. below, professional services include:
 - a. Preparing, approving, or failing to prepare or approve, maps, shop drawings, opinions, reports, surveys, field orders, change orders, or drawings and specifications; and
 - b. Supervisory or inspection activities performed as part of any related architectural or engineering activities.
3. Professional services do not include services within construction means, methods, techniques, sequences and procedures employed by you in connection with your operations in your capacity as a construction contractor.



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POLICY NUMBER:

COMMERCIAL GENERAL LIABILITY
CG 24 04 05 09

WAIVER OF TRANSFER OF RIGHTS OF RECOVERY AGAINST OTHERS TO US

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART
PRODUCTS/ COMPLETED OPERATIONS LIABILITY COVERAGE PART

SCHEDULE

Name Of Person Or Organization:

ANY PERSON OR ORGANIZATION WITH WHOM THE INSURED HAS AGREED TO WAIVE RIGHTS OF RECOVERY, PROVIDED SUCH AGREEMENT IS MADE IN WRITING AND PRIOR TO THE LOSS.

Information required to complete this Schedule, if not shown above, will be shown in the Declarations.

The following is added to Paragraph 8. **Transfer Of Rights Of Recovery Against Others To Us** of Section IV - Conditions:

We waive any right of recovery we may have against the person or organization shown in the Schedule above because of payments we make for injury or damage arising out of your ongoing operations or "your work" done under a contract with that person or organization and included in the "products-completed operations hazard". This waiver applies only to the person or organization shown in the Schedule above.



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Trisura Specialty Insurance Company

COMMERCIAL GENERAL LIABILITY
CG 24 26 04 13

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

AMENDMENT OF INSURED CONTRACT DEFINITION

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART
PRODUCTS/ COMPLETED OPERATIONS LIABILITY COVERAGE PART

The definition of "insured contract" in the **Definitions** section is replaced by the following:

"Insured contract" means:

- a. A contract for a lease of premises. However, that portion of the contract for a lease of premises that indemnifies any person or organization for damage by fire to premises while rented to you or temporarily occupied by you with permission of the owner is not an "insured contract";
- b. A sidetrack agreement;
- c. Any easement or license agreement, except in connection with construction or demolition operations on or within 50 feet of a railroad;
- d. An obligation, as required by ordinance, to indemnify a municipality, except in connection with work for a municipality;
- e. An elevator maintenance agreement;
- f. That part of any other contract or agreement pertaining to your business (including an indemnification of a municipality in connection with work performed for a municipality) under which you assume the tort liability of another party to pay for "bodily injury" or "property damage" to a third person or organization, provided the "bodily injury" or "property damage" is caused, in whole or in part, by you or by those acting on your behalf. However, such part of a contract or agreement shall only be considered an "insured contract" to the extent your assumption of the tort liability is permitted by law. Tort liability means a liability that would be imposed by law in the absence of any contract or agreement.

Paragraph f. does not include that part of any contract or agreement:

- (1) That indemnifies a railroad for "bodily injury" or "property damage" arising out of construction or demolition operations, within 50 feet of any railroad property and affecting any railroad bridge or trestle, tracks, road-beds, tunnel, underpass or crossing;
- (2) That indemnifies an architect, engineer or surveyor for injury or damage arising out of:
 - (a) Preparing, approving, or failing to prepare or approve, maps, shop drawings, opinions, reports, surveys, field orders, change orders or drawings and specifications; or
 - (b) Giving directions or instructions, or failing to give them, if that is the primary cause of the injury or damage; or
- (3) Under which the insured, if an architect, engineer or surveyor, assumes liability for an injury or damage arising out of the insured's rendering or failure to render professional services, including those listed in (2) above and supervisory, inspection, architectural or engineering activities.



Transborder Insurance Intermediaries

POLICY NUMBER: TTT-44-2-180176

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Trisura Specialty Insurance Company

COMMERCIAL GENERAL LIABILITY
CG 25 03 05 09

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

DESIGNATED CONSTRUCTION PROJECT(S) GENERAL AGGREGATE LIMIT

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

SCHEDULE

Designated Construction Project(s):

Information required to complete this Schedule, if not shown above, will be shown in the Declarations.

- A.** For all sums which the insured becomes legally obligated to pay as damages caused by "occurrences" under Section I - Coverage A, and for all medical expenses caused by accidents under Section I - Coverage C, which can be attributed only to ongoing operations at a single designated construction project shown in the Schedule above:
1. A separate Designated Construction Project General Aggregate Limit applies to each designated construction project, and that limit is equal to the amount of the General Aggregate Limit shown in the Declarations.
 2. The Designated Construction Project General Aggregate Limit is the most we will pay for the sum of all damages under Coverage A, except damages because of "bodily injury" or "property damage" included in the "products-completed operations hazard", and for medical expenses under Coverage C regardless of the number of:
 - a. Insureds;
 - b. Claims made or "suits" brought; or
 - c. Persons or organizations making claims or bringing "suits".
 3. Any payments made under Coverage A for damages or under Coverage C for medical expenses shall reduce the Designated Construction Project General Aggregate Limit for that designated construction project. Such payments shall not reduce the General Aggregate Limit shown in the Declarations nor shall they reduce any other Designated Construction Project General Aggregate Limit for any other designated construction project shown in the Schedule above.
 4. The limits shown in the Declarations for Each Occurrence, Damage To Premises Rented To You and Medical Expense continue to apply. However, instead of being subject to the General Aggregate Limit shown in the Declarations, such limits will be subject to the applicable Designated Construction Project General Aggregate Limit.



Transborder Insurance Intermediaries

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Trisura Specialty Insurance Company

- B.** For all sums which the insured becomes legally obligated to pay as damages caused by "occurrences" under Section I - Coverage A, and for all medical expenses caused by accidents under Section I - Coverage C, which cannot be attributed only to ongoing operations at a single designated construction project shown in the Schedule above:
1. Any payments made under Coverage A for damages or under Coverage C for medical expenses shall reduce the amount available under the General Aggregate Limit or the Products-completed Operations Aggregate Limit, whichever is applicable; and
 2. Such payments shall not reduce any Designated Construction Project General Aggregate Limit.
- C.** When coverage for liability arising out of the "products-completed operations hazard" is provided, any payments for damages because of "bodily injury" or "property damage" included in the "products-completed operations hazard" will reduce the Products-completed Operations Aggregate Limit, and not reduce the General Aggregate Limit nor the Designated Construction Project General Aggregate Limit.
- D.** If the applicable designated construction project has been abandoned, delayed, or abandoned and then restarted, or if the authorized contracting parties deviate from plans, blueprints, designs, specifications or timetables, the project will still be deemed to be the same construction project.
- E.** The provisions of Section III - Limits Of Insurance not otherwise modified by this endorsement shall continue to apply as stipulated.



To report an accident please call:

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S ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

CONTINUING OR ONGOING DAMAGE EXCLUSION

This endorsement modifies insurance provided under the following:

**COMMERCIAL GENERAL LIABILITY COVERAGE FORM
OWNERS AND CONTRACTORS PROTECTIVE LIABILITY COVERAGE
FORM - COVERAGE FOR OPERATIONS OF DESIGNATED CONTRACTOR**

The following exclusion is added to subsection 2. **Exclusions of SECTION I - COVERAGE:**

This insurance does not apply to "property damage" when any of the following apply:

Continuing Or Ongoing Damage

1. The "property damage" first occurred, began to occur or is alleged to have occurred or been in the process of occurring, to any degree, in whole or in part, prior to the inception date of this policy.
2. The "property damage" is indiscernible from other damage that is incremental, continuous or progressive damage arising from an "occurrence" which first occurred, began to occur or is alleged to have occurred, to any degree, in whole or in part, prior to the inception date of this policy.

A handwritten signature in black ink, appearing to read "C. King".

AUTHORIZED REPRESENTATIVE

DATE

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

**KNOWN INJURY OR DAMAGE EXCLUSION -
PERSONAL AND ADVERTISING INJURY**

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE FORM

The following exclusion is added to Paragraph 2. **Exclusions of SECTION I - COVERAGES, COVERAGE B PERSONAL AND ADVERTISING INJURY LIABILITY:**

Known Injury Or Damage

This insurance does not apply to "personal and advertising injury" arising from an offense:

- a. That occurs during the policy period and, prior to the policy period, an insured listed under Paragraph 1. of **SECTION II - WHO IS AN INSURED** or an "employee" authorized by you to give or receive notice of an offense or claim, knew that the "personal and advertising injury" had occurred prior to the policy period, in whole or in part. If such a listed insured or authorized "employee" knew, prior to the policy period, that the "personal and advertising injury" occurred, then any continuation, change or resumption of such offense during or after the policy period will be deemed to have been known prior to the policy period; or
- b. That occurs during the policy period and was, prior to the policy period, known to have

occurred by any insured listed under Paragraph 1. of **SECTION II - WHO IS AN INSURED** or an "employee" authorized by you to give or receive notice of an offense or claim, includes any continuation, change or resumption of that "personal and advertising injury" after the end of the policy period.

A "personal and advertising injury" arising from an offense will be deemed to have been known to have occurred at the earliest time when any insured listed under Paragraph 1. of **SECTION II - WHO IS AN INSURED** or an "employee" authorized by you to give or receive notice of an offense or claim:

- (1) Reports all, or any part, of the "personal and advertising injury" to us or any other insurer;
- (2) Receives a written or verbal demand or claim for damages because of the "personal and advertising injury"; or
- (3) Becomes aware by any other means that "personal and advertising injury" has occurred or has begun to occur.



AUTHORIZED REPRESENTATIVE

DATE

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THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.



MARIJUANA/ CANNABIS PRODUCTS EXCLUSION

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

This insurance does not apply to "bodily injury," "property damage" and/ or "personal and advertising injury" arising out of the sale, consumption, use or the exposure to the consumption or use of "marijuana," "edible marijuana-infused product," "marijuana-infused product," "cannabis," or "cannabis containing product, or any material, substance or item containing tetrahydrocannabinol (THC).

However, this exclusion shall not apply in the following state(s) [If left blank this exclusion applies in all states]:

For purposes of this endorsement, the following definitions apply:

"Cannabis" means the following substances under whatever names they may be designated: The resin extracted from any part of a plant of the genus cannabis, and every compound, manufacture, salt, derivative, mixture or preparation of such plant, its seeds or its resin.

"Cannabis containing product" means a product containing "cannabis" that is intended for use or consumption, including but not limited to edible products, ointments, aerosols, oils, and tinctures.

"Edible marijuana-infused product" means a "Marijuana-Infused Product" that is to be consumed by eating or drinking.

"Marijuana" means all parts of the plant Cannabis sativa L., whether growing or not; the seeds thereof; and resin extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds or resin. The term also includes "marijuana infused product(s)."

"Marijuana-Infused Product" means a product infused with marijuana that is intended for use or consumption, including but not limited to edible products, ointments, aerosols, oils, and tinctures.

AUTHORIZED REPRESENTATIVE

DATE

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.



OPTIONAL PROVISIONS ENDORSEMENT

The following special provisions (indicated by an "X") apply to this policy:

SCHEDULE

- ☐ **Bodily Injury, Property Damage, Personal Injury and Advertising Injury Liability Deductible Endorsement**

Coverage	Amount and Basis of Deductible		
Bodily Injury Liability	\$	500	per claimant
Property Damage Liability	\$	500	per claimant
Personal and Advertising Injury Liability	\$	500	per claimant

- ☐ **Service of Suit Clause**

Service of Process will be accepted by: _____, and

Service of Process will be mailed to: _____

- ☐ **Minimum and Advance Premium Endorsement**

Minimum Premium _____ %.

- ☐ **Minimum Earned Cancellation Premium**

Minimum Earned Cancellation Premium 25% of the advance premium.

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Trisura Specialty Insurance Company

GLS-94s (6-15)

BODILY INJURY, PROPERTY DAMAGE, PERSONAL INJURY AND ADVERTISING INJURY LIABILITY DEDUCTIBLE ENDORSEMENT

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

1. Our obligation under the Bodily Injury Liability, Property Damage Liability, Personal and Advertising Injury Liability coverages to pay damages on your behalf applies only to the amount of damages in excess of any deductible amounts stated in the Schedule above as applicable to such coverages, and the Limits of Insurance applicable to Each Occurrence or offense for such coverages will be reduced by the amount of such deductible. Aggregate Limits for such coverages shall not be reduced by the application of such deductible amount.
2. The deductible amounts apply to damages and "loss adjustment expenses."

"Loss Adjustment Expenses" means the expenses which are incurred in conjunction with the defense, adjustment or settlement of claims made under any one of the policies and which are allocable to such claims according to generally accepted insurance industry practices; such expenses include, but are not limited to, expenditures for legal costs, attorneys fees, investigations, experts, independent adjustment services, and expenses incurred in obtaining recovery against any third party.
3. The deductible amounts stated in the Schedule above apply, respectively:
 - a. Under the Bodily Injury Liability Coverage to all damages because of "bodily injury" sustained by one person;
 - b. Under the Property Damage Liability Coverage to all damages because of "property damage" sustained by one person, organization or association; and
 - c. Under the Personal and Advertising Injury Liability coverage to all damages sustained by one person, organization or association;

as the result of any one "occurrence" or offense.
4. The terms of this insurance, including those with respect to our right and duty to defend any "suits" seeking those damages and your duties in the event of an "occurrence," offense, claim or "suit," apply irrespective of the application of the deductible amount.
5. We may pay any part or all of the deductible amount to effect settlement of any claim or "suit," and upon notification of the action taken, you shall promptly reimburse us for such part of the deductible amount as has been paid by us.

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UTS-9g (5-96)

SERVICE OF SUIT CLAUSE

It is agreed that in the event of the failure of the Company to pay any amount claimed to be due under this policy, the Company at the request of the Insured (or reinsured), will submit to the jurisdiction of any court of competent jurisdiction within the United States of America and will comply with all requirements necessary to give the Court jurisdiction. All matters which arise will be determined in accordance with the law and practice of the Court. In a suit instituted against any one of them under this contract, the Company agrees to abide by the final decision of the Court or of any Appellate Court in the event of an appeal.

Pursuant to any statute of any state, territory or district of the United States of America which makes a provision, the Company will designate the Superintendent, Commissioner or Director of Insurance or other officer specified for that purpose in the statute, or his successor or successors in office, as their true and lawful attorney upon whom may be served any lawful process in any action, suit, or proceeding instituted by or on behalf of the Insured (or reinsured) or any beneficiary arising out of this contract of insurance (or reinsurance).

The officer named in the Schedule of this endorsement is authorized and directed to accept service of process on behalf of the Company.

Having accepted service of process on behalf of the Company, the officer is authorized to mail the process or a true copy to the individual named in the Schedule above.

GLS-47s (10-07)

MINIMUM AND ADVANCE PREMIUM ENDORSEMENT

This endorsement modifies Conditions provided under the following:

**COMMERCIAL GENERAL LIABILITY COVERAGE PART
LIQUOR LIABILITY COVERAGE PART
PRODUCTS/ COMPLETED OPERATIONS LIABILITY COVERAGE PART**

Item 5.b. of the Premium Audit Condition (under **SECTION IV - COMMERCIAL GENERAL LIABILITY CONDITIONS, LIQUOR LIABILITY CONDITIONS AND PRODUCTS/ COMPLETED OPERATIONS LIABILITY CONDITIONS**) is amended to read:

- b. The advance premium for this Coverage Part is a deposit premium only. The final premium shall be subject to audit. At the close of each audit period we will compute the earned premium for that period. Any audit premiums are due and payable to us on notice to the first Named Insured. If the sum of the advance and audit premiums paid for the policy term is greater than the earned premium, we will return the excess to the first Named Insured, subject to the minimum premium as defined below. In the event the first Named Insured fails or refuses to allow our representative to audit your books and records, we may unilaterally charge a final premium for the policy period at double the minimum or advance premium, whichever is greater, and such final premium shall be immediately due and payable on notice to the first Named Insured. For purposes of this endorsement, the terms advance premium, earned premium, and minimum premium are defined as follows:

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Advance Premium - The premium that is stated in the applicable initial policy Declarations or Renewal Certificate and payable in full by the first Named Insured at the inception of each Policy Period.

Earned Premium - The premium that is developed by applying the rate(s) scheduled in the policy to the actual premium basis for the audit period.

Minimum Premium - The lowest premium for which this insurance will be written for the Policy Period stated in **Item 2.** of the Declarations of the applicable initial policy or subsequent Renewal Certificate. This minimum premium is equal to one hundred percent (100%) (unless a different percentage [%] is shown in the **SCHEDULE** above) of the advance premium including any premium adjustments made by endorsement to this policy during the Policy Period. Premium adjustments do not include the audit premium developed for the Policy Period stated in **Item 2.** of the Declarations.

UTS-119g (6-14)

MINIMUM EARNED CANCELLATION PREMIUM

The following provision is added to the Cancellation Condition:

If You request cancellation of this policy, We will retain not less than the portion of the advance premium as stated in the Schedule.

AUTHORIZED REPRESENTATIVE

DATE

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Trisura Specialty Insurance Company
210 Park Avenue, Suite 1400
Oklahoma City, OK 73102

Scheduled Vehicles and Listed Drivers Only Endorsement
THIS ENDORSEMENT AMENDS THE POLICY TERMS. PLEASE READ CAREFULLY
Este endoso cambia los términos de la póliza. Y debe ser leído cuidadosamente

DECLARATIONS BY THE INSURED:

I CONFIRM MY UNDERSTANDING OF THE
FOLLOWING POLICY CONDITIONS:

- ✓ I UNDERSTAND AND AGREE THAT COVERAGE UNDER THIS POLICY EXTENDS ONLY TO THOSE VEHICLES SCHEDULED IN THE POLICY WHEN SAID VEHICLES ARE DRIVEN BY DRIVERS LISTED IN THE POLICY.
- ✓ I UNDERSTAND AND AGREE THAT THIS POLICY INCLUDES A TERRITORIAL LIMIT BASED ON THE RADIUS (MILEAGE) STIPULATED IN THE DECLARATIONS AND CERTIFICATES. I UNDERSTAND THAT COVERAGE HEREUNDER IS EFFECTIVE ONLY WHILE THE VEHICLE(S) TRANSITS ON US TERRITORY, AND COVERAGE TAKES EFFECT UPON CROSSING THE BORDER INTO THE USA.

DECLARACIONES POR EL ASEGURADO:

CONFIRMO MI CONFORMIDAD CON LAS SIGUIENTES
CONDICIONES DE LA POLIZA:

- ✓ Entiendo y acepto que cobertura bajo esta póliza cubre solo vehículos listados en la póliza cuando tales son conducidos por conductores nombrados en la póliza.
- ✓ Entiendo y acepto que esta póliza cuenta con una limitación de distancia (radio) desde el punto de ingreso a USA, la cual se estipula en las declaraciones y certificados; reconozco que cobertura bajo esta póliza tiene vigencia únicamente mientras que el vehículo circule en territorio de USA, y que dicha vigencia toma efecto al cruzar la frontera A USA.

This declaration might be signed o behalf of and with authority from the insured by an authorized representative

I understand and accept the declarations above

Entiendo y acepto estas declaraciones

Signed (Firmado): _____ Date (fecha)

Name (Nombre): _____

EXHIBIT "B"

El Paso County - 168th District Court

Filed 7/8/2019 5:06 PM

Norma Favela Barceleau

District Clerk

El Paso County

2019DCV2558

CAUSE NO. _____

VANESSA REYES, Individually and as	§	IN THE ____ DISTRICT COURT
Next Friend of X.R. and S.R., minor	§	
children, and as Representative of the	§	
Estate of Hector Reyes-Acosta	§	
<i>Plaintiffs,</i>	§	
	§	
v.	§	OF
	§	
JORDAN MARTINEZ d/b/a	§	
JIT TRANSPORTATION	§	
<i>Defendant.</i>	§	EL PASO COUNTY, TEXAS

PLAINTIFFS' ORIGINAL PETITION AND JURY DEMAND

TO THE HONORABLE JUDGE OF SAID COURT:

COME NOW, Vanessa Reyes, Individually and as next friend of X.R. and S.R., minor children, and as Representative of the Estate of Hector Reyes-Acosta, Plaintiffs, complaining of Jordan Martinez d/b/a JIT Transportation, Defendant, and would respectfully show the Court as follows:

I. DISCOVERY

1.01 Pursuant to Rule 190.1 of the Texas Rules of Civil Procedure, Plaintiffs intend to conduct discovery in this case under level 3 (Rule 190.4 Texas Rules of Civil Procedure).

II. PARTIES

2.01 Plaintiff Vanessa Reyes is an individual and resident of the state of Texas. She is the wife of Hector Reyes-Acosta, and mother of X.R. and S.R., the biological children of Hector Reyes-Acosta. Pursuant to TEX. CIV. PRAC. REM. CODE § 30.014, the last three digits of her SSN are 198.

2.02 Upon information and belief, Defendant Jordan Martinez d/b/a JIT Transportation (JIT) is an individual whose principal place of business is located at 4945 Ruben Soto Dr., El Paso, Tx,

79938. Defendant JIT may be served with process at the foregoing address or wherever he may be found.

III. VENUE AND JURISDICTION

3.01 Venue is proper in El Paso County, Texas, pursuant to TEX. CIV. PRAC. REM. CODE §15.002(a)(2) because it is the county of Defendant Jordan Martinez's and JIT's principal place of business at the time the cause of action accrued.

3.02 The amount of the Plaintiffs' damages is substantial and well in excess of the jurisdictional minimums of this Court. Many elements of damage cannot be determined with mathematical precision. Furthermore, the determination of many of these elements of damage is peculiarly within the province of the jury. Plaintiffs do not at this time seek any certain amount of damages for any particular element of damage but would instead rely upon the collective wisdom of the jury to determine an amount that would fairly and reasonably compensate Plaintiffs. However, in order to comply with the pleading requirements of TEX. R. CIV. P. 47(C)(5), Plaintiffs plead that she seeks monetary relief over \$1,000,000. Plaintiffs also seek judgment for all other relief to which Plaintiffs are entitled. Plaintiffs reserve the right to file an amended pleading on this issue should subsequent evidence show this figure to be either too high or too low.

IV. FACTS

4.01 On or about June 17, 2019, Hector Reyes-Acosta was driving eastbound from El Paso, Texas towards Laredo, Texas on U.S. 90. At the same time, Cayetano Chavarria was driving an 18-wheeler owned by Defendant JIT and hauling a trailer believed to be owned by Werner Enterprises, heading westbound on U.S. 90. As Mr. Reyes-Acosta was driving along U.S. 90, Mr. Chavarria's truck and trailer drifted out of his lane and into oncoming traffic and collided head-on

with Mr. Reyes-Acosta. As a result of the collision both tractors caught fire, burning both Mr. Reyes-Acosta and Mr. Chavarria, which led to their deaths.

4.02 Upon information and belief, Mr. Chavarria was acting in the course and scope of his employment for Defendant JIT and/or others at the time of the collision.

4.03 Defendant's negligence proximately caused the crash, the death of Mr. Reyes-Acosta, and the resulting damages sustained by Plaintiffs.

V. CAUSES OF ACTION

Negligence

5.01 Mr. Chavarria failed to operate the motor vehicle in a reasonably prudent manner as a driver under the same or similar circumstances would have done. Mr. Chavarria's actions were the proximate cause of the collision and he was negligent in many respects including, but not limited to, the following:

- a. In operating a vehicle in a careless manner;
- b. In failing to maintain his commercial vehicle under control;
- c. In failing to use due care in operating a commercial vehicle;
- d. In failing to maintain his lane;
- e. In failing to drive on the right half of the roadway; and,
- f. In failing to take proper evasive action to avoid a collision.

Negligence Per Se

5.02 At the time of the aforesaid improper driving there were in force and effect Texas Statutes that were violated by Mr. Chavarria, including:

- a. Texas Transportation Code § 545.051 -- failing to drive on the right half of the roadway; and,
- b. Texas Transportation Code § 545.060 -- failing to maintain his lane.

5.03 Defendant's breach of the duties imposed by the statutes is negligence *per se* and proximately caused the injuries and damages to the Plaintiffs specified herein. These statutes are designed to protect the class of persons to which Plaintiffs belong, and from the type of injuries and damages suffered by Plaintiffs. Mr. Chavarria's violation of these statutes lacked legal excuse.

Respondeat Superior

5.04 Vicarious liability for Plaintiffs' injuries and damages attaches to Defendant JIT, and possibly others, through *respondeat superior* in the following respects:

- a. Driver Chavarria was an employee of Defendant JIT, and possibly others, at the time of the incident;
- b. Driver Chavarria was working in the course and scope of his employment at the time of the incident;
- c. Driver Chavarria was acting in furtherance of Defendant JIT's, and possibly others, business at the time of the incident;
- d. Driver Chavarria was working for the accomplishment of the object for which he was hired; and
- e. Driver Chavarria's negligence is a proximate cause of Plaintiff's injuries and damages.

Negligent Entrustment, Hiring, Training, Supervision, and Retention

5.05 The conduct of Defendant JIT constitutes negligence in many respects including but not limited to the following:

- a. Defendant JIT failed to safely entrust its trucks to competent drivers;
- b. Defendant JIT failed to hire, supervise, and train competent drivers;
- c. Defendant JIT failed to retain competent drivers;
- d. Defendant JIT failed to fire incompetent or dangerous drivers; and
- f. Each foregoing breach, singularly or in combination with other acts or omissions proximately caused Plaintiff's injuries and damages.

VI. DAMAGES

Wrongful Death Damages

6.01 As a result of the occurrence made the basis of this lawsuit and the resulting death of Hector Reyes-Acosta, Plaintiffs were caused to suffer injury. Some of said injuries are, in reasonable probability, permanent in nature and include mental anguish in the past, and will, in reasonable probability, continue to suffer the same in the future. As a result of the injuries and damages described herein, Plaintiffs have been injured and have sustained damages in a manner within the jurisdictional limits of this court for which they now sue.

A. Wrongful Death

6.02 As a direct and proximate result of the incident in question, Hector Reyes-Acosta was killed. Vanessa Reyes brings this action pursuant to §71.001, *et seq.*, of the Texas Civil Practices and Remedies Code, commonly referred to as the “Wrongful Death Act” on her own behalf and on behalf of her children, X.R. and S.R. Vanessa Reyes, X.R., and S.R. have suffered an immeasurable loss by virtue of the economic and non-economic damages associated with the death of their husband and father, Hector Reyes-Acosta, and the resulting destruction of the husband-wife and parent-child relationship, including the loss of the positive benefits flowing from the love, comfort, companionship, and society from Hector Reyes-Acosta, Deceased.

6.03 As a direct and proximate result of the conduct of Defendant, as described above, Vanessa Reyes, X.R., and S.R. have, each individually, suffered damages for the wrongful death of their husband and father as follows:

- a. Pecuniary loss sustained in the past and which will reasonably be sustained in the future;

- b. Loss of consortium and society to Vanessa Reyes and loss of companionship and society to X.R. and S.R. sustained in the past and which will reasonably be sustained in the future;
- c. Mental anguish sustained in the past and which will reasonably be sustained in the future; and
- d. Loss of care & support.

B. Survival Damages

6.04 Plaintiff, as the representatives of the Estate of Hector Reyes-Acosta brings this action pursuant to Section 71.021 of the Texas Civil Practice and Remedies Code, commonly referred to as the "Survival Statute." Plaintiff would show that Hector Reyes-Acosta was not killed instantly in the incident in question. The following damages survived to his estate, for which Plaintiff sue:

- a. Physical pain and mental anguish; and
- b. Funeral and burial expenses.

VII. PRAYER

WHEREFORE, PREMISES CONSIDERED, Plaintiffs respectfully request the Defendant be cited to appear and answer and that upon final trial by jury, Plaintiffs recover against Defendant the following:

- 1. Compensatory damages as set forth above;
- 2. Pre-judgment and post-judgment interest as allowed by law;
- 3. Costs of court; and
- 4. Such other, further and different relief to which Plaintiffs may show themselves justly entitled.

Respectfully submitted,

GLASHEEN, VALLES & INDERMAN, LLP
P.O. Box 1976 (79408-1976)
1302 Texas Avenue
Lubbock, Texas 79401
(806) 776-1332 - Telephone
(806) 329-0595 - Facsimile
efile.jmedina@gvilaw.com

/s/ Jason Medina

Jason Medina

State Bar No. 24046417

ATTORNEYS FOR PLAINTIFFS

JURY DEMAND

Plaintiffs hereby respectfully demand a trial by jury in this cause and herewith pay the required fee.

/s/ Jason Medina

Jason Medina

CAUSE NO. _____

VANESSA REYES, Individually and as	§	IN THE _____ DISTRICT COURT
Next Friend of X.R. and S.R., minor	§	
children, and as Representative of the	§	
Estate of Hector Reyes-Acosta	§	
<i>Plaintiffs,</i>	§	
	§	
v.	§	OF
	§	
JORDAN MARTINEZ d/b/a	§	
JIT TRANSPORTATION	§	
<i>Defendant.</i>	§	EL PASO COUNTY, TEXAS

PLAINTIFFS' JURY REQUEST

Upon payment of the required jury fee and upon filing this written request for jury trial, as required by El Paso Local Rule 3.05, request is herein made that the case be placed on the court's jury docket.

Plaintiffs herewith pay the required jury fee.

Respectfully submitted,

GLASHEEN, VALLES & INDERMAN, LLP
P.O. Box 1976 (79408-1976)
1302 Texas Avenue
Lubbock, Texas 79401
(806) 776-1332 - Telephone
(806) 329-0595 - Facsimile
efile.jmedina@gvilaw.com

/s/ Jason Medina

Jason Medina
State Bar No. 24046417

ATTORNEYS FOR PLAINTIFFS

EXHIBIT "C"



First Notice of Loss

06/19/2019

AGENCY:

Telephone: (619) 863-5111 Licon Insurance Group 369 Shadow Mountain Drive El Paso TX, 79912		COMPANY: Trisura Specialty Insurance Company 210 Park Avenue, Suite 1400 Oklahoma City, OK 73102		CLAIM NUMBER: C01-2-190713	
EMAIL: dlicona@liconainsurance.com		POLICY NUMBER: TTT-44-2-180176	POLICY TYPE: AL	REPORTED ON: 06/18/2019	CAT#:
CODE: 44	SUBCODE: LI	EFFECTIVE DATE: 09/04/2018	EXPIRATION DATE: 09/04/2019	DATE/TIME OF ACCIDENT: 06/17/2019 23:00	PREVIOUSLY REPORTED: No
AGENCY CUSTOMER ID:					

INSURED:
CONTACT:

NAME AND ADDRESS: JORDAN MARTINEZ 4945 RUBEN SOTO DR EL PASO TX, 79938	SSN/FEIN:	NAME AND ADDRESS: Jordan Martinez
PHONE (a/c, No, Ext): (915) 667- 1006		PHONE (a/c, No, Ext): 915-269-7183
CELLPHONE (a/c, No):		CELLPHONE (a/c, No):
EMAIL ADDRESS: jittransportation@yahoo.com		EMAIL ADDRESS: jittransportation@yahoo.com

LOSS:

LOCATION OF ACCIDENT: (include city and state) I-90 Terrel County, Texas	AUTHORITY CONTACTED: YES REPORT #: Unknown	VIOLATIONS/CITATIONS:
DESCRIPTION OF ACCIDENT: (use separate sheet, if necessary) Reported by insured We have 2 fatalities due to 2 semi-trucks collided head on. Both trucks were for the same insured. No more details on how the accident happened. The only thing they found from the crash was IV's door with unit number on it Driver was added since policy inception Vehicle was added by endorsement effective on 10-16-2018 Policy has auto liability and general liability coverage		

POLICY

BODILY INJURY: (per person)	BODILY INJURY: (per accident)	PROPERTY DAMAGE:	SINGLE LIMIT: \$1,000,000 CSL	MEDICAL PAYMENT:	OTC DEDUCTIBLE:	OTHER COVERAGE & DEDUCTIBLE:
LOSS PAYEE:					COLLISION DED:	
CARRIERS:				LIMITS:		

INSURED VEHICLE:

VEH #: 13	YEAR: 2019	MAKE: KENWORTH	BODY TYPE:	PLATE NUMBER:	STATE:
		MODEL: Tractor	VIN #: 1XKYD49X7KJ259116		
OWNER'S NAME & ADDRESS: JORDAN MARTINEZ 4945 RUBEN SOTO DR EL PASO TX, 79938				PHONE (a/c, No, Ext):	
				CELLPHONE (a/c, No):	
DRIVER'S NAME & ADDRESS: REYES, HECTOR				PHONE (a/c, No, Ext):	
				CELLPHONE (a/c, No):	
RELATION TO INSURED: Employee	DOB: 07/08/1993	DRIVER'S LICENSE NUMBER: CHIH226053		STATE OF ISSUE:	
DESCRIBE DAMAGE:				ESTIMATED AMOUNT: 0	

PROPERTY DAMAGED:

VEHICLE Y/N: 1XKYD49X3GJ485189	DESCRIBE PROPERTY:	YEAR:	MODEL:	COMPANY OR AGENCY NAME:	POLICY #:
		MAKE:	PLATE:		
OWNER'S NAME & ADDRESS: JORDAN MARTINEZ 4945 RUBEN SOTO DR EL PASO TX, 79938				PHONE (a/c, No, Ext):	
				CELLPHONE (a/c, No):	
OTHER DRIVER'S NAME & ADDRESS: Cayetano, Chavarria				PHONE (a/c, No, Ext):	
				CELLPHONE (a/c, No):	
DESCRIBE DAMAGE:				ESTIMATED AMOUNT: 0	

INJURED:

NAME & ADDRESS	PHONE (a/c, No.)	PED	INS VEH	OTH VEH	AGE	EXTENT OF INJURY

WITNESS OR PASSENGER:

NAME & ADDRESS		PHONE (a/c, No.)	INS VEH	OTH VEH	OTHER (specify)
REPORTED BY			REPORTED TO		
SIGNATURE OF INSURED	DATE (mm/dd/yyyy)	SIGNATURE OF PRODUCER		DATE (mm/dd/yyyy)	

REMARKS:

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Applicable in ARIZONA

For your protection, Arizona law requires the following statement to appear on this form. Any person who knowingly presents a false or fraudulent claim for payment of a loss is subject to criminal and civil penalties.

Applicable in CALIFORNIA

For your protection, California law requires the following to appear on this form: Any person who knowingly presents a false or fraudulent claim for payment of a loss is guilty of a crime and may be subject to fines and confinement in state prison.

**Applicable in Arkansas, Delaware, District of Columbia, Kentucky, Louisiana, Maine,
Michigan, New Jersey, New Mexico, North Dakota, Pennsylvania, South Dakota,
Tennessee, Texas, Virginia, Washington and West Virginia**

Any person who knowingly and with intent to defraud any insurance company or another person, files a statement of claim containing any materially false information, or conceals for the purpose of misleading, information concerning any fact, material thereto, commits a fraudulent insurance act, which is a crime, subject to criminal prosecution and civil penalties. In DC, LA, ME, TN, VA and WA, insurance benefits may also be denied.